Supreme Judicial Court

FOR THE COMMONWEALTH OF MASSACHUSETTS
SJC FAR No.

Suffolk, ss.

ERICA DiPLACIDO, ET AL.,
Plaintiffs-Appellees,

- VS. -

ASSURANCE WIRELESS OF SOUTH CAROLINA LLC, SPRINT CORPORATION, BOSS ENTERPRISE, INC., KURALAY BEKBOSSYNOVA,
Defendants-Appellants.

On Appeal From The Superior Court Of Suffolk County

Appeals Court No. 22-P-950

APPELLANTS' APPLICATION FOR FURTHER APPELLATE REVIEW

Date: 05/11/2023

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I. REQUEST FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW

Pursuant to Mass. R. App. P. 27.1, Defendant-Appellant Assurance Wireless of South Carolina LLC and Sprint Corporation (together "Sprint")[1] respectfully request that this Court grant leave for further appellate review of the Appeals Court Order dated April 21, 2023 ("Order"). That Order affirmed the Superior Court's decision, dated July 29, 2021, denying Sprint's motion to compel arbitration. In so doing, the Appeals Court misconstrued a seminal ruling from the Supreme Judicial Court that delimits the circumstances in which a non-signatory may enforce an arbitration agreement. As such, this Court should grant further appellate review for substantial reasons affecting the public interest and the interests of justice.

Plaintiffs' claims against Sprint are premised on the theory that Sprint was their joint employer with respect to work that they performed for their direct employer, Boss Enterprise, Inc. ("Boss") and its President, Kuralay Bekbossynova (together, the "Boss Defendants"). The Appeals Court erred in finding that equitable estoppel does not permit Sprint to compel Plaintiff-Appellees Erica DiPlacido, Tyler Keeley, and Ryan Labrie to arbitrate their unpaid wage claims against Sprint, under

[1] In their Complaint, Plaintiffs improperly identified Assurance Wireless of South Carolina, LLC and Sprint Corporation as the entities responsible for the Assurance Wireless program. As the Superior Court recognized, the parties "agree that Sprint Solutions, Inc. is the proper defendant." Record Appendix ("RA") at 86, n.3. Appellees have yet to amend their complaint or moved to substitute parties.

the standard set forth by this Court in *Machado v. System4 LLC*, 471 Mass. 204, 213 (2015), which requires a plaintiff to arbitrate all claims that are "inextricably intertwined with" claims that are subject to an arbitration agreement.

Machado instructs claims are "inextricably intertwined" for estoppel purposes where the allegations in a complaint attribute "interdependent and concerted misconduct" to the respective defendants. Plaintiffs concede that they are obligated to arbitrate their wage claims against the Boss Defendants, and there is no dispute that Plaintiffs' claims against Sprint and the Boss Defendants arise out of one body of work – *i.e.*, Plaintiffs' sale of Sprint's products in the course of performing door-to-door sales work for Boss. Plaintiffs plead substantively identical claims against Sprint and the Boss Defendants and seek to recover one pool of damages, for which they argue that Sprint and the Boss Defendants are jointly and severally liable. As such, Plaintiffs' claims against Sprint are inextricably intertwined with the claims that they are bound to arbitrate against the Boss Defendants.

In applying *Machado*'s equitable estoppel standard, the Appeals Court incorrectly relied on (1) the pagination and formatting of the Complaint, focusing exclusively on the fact that Plaintiffs pled their identical claims against Sprint and the Boss Defendants in separate (but substantively identical) paragraphs, rather than assessing the substance of Plaintiffs' allegations against the respective Defendants; and (2) the fact that Plaintiffs' claims against the Defendants involved subtly

different theories of recovery (*i.e.*, against the Boss Defendants as their direct employer, and Sprint as an alleged joint employer), even though they seek to recover from both Defendants for the same alleged wrong (*i.e.*, minimum wage and overtime payments relating to the hours they worked for Boss). This formalistic approach undermines and erodes this Court's reasoning and holding in *Machado* and should be reversed.

II. STATEMENT OF PRIOR PROCEEDINGS

Plaintiffs filed this action as a putative class action case in Norfolk Superior Court, alleging failure to pay minimum wage and overtime for all hours worked. RA 9 (the "Complaint"). Sprint timely moved to dismiss the Complaint. RA 4 (Dkt. 8). However, before the court heard oral arguments on that motion, counsel for the Boss Defendants filed a notice of appearance, *see* RA 4, and notified all parties of her intent to move to compel arbitration of the claims against her clients. Shortly thereafter, Sprint and the Boss Defendants jointly moved to compel arbitration. *See* RA 5 (Dkt. 15) (the "Motion"). Plaintiffs opposed the Motion as to Sprint and Bekbossynova, but conceded that they were required to arbitrate their claims against Boss. RA 5 (Dkt. 15.3). On July 29, 2022, the trial court denied the Motion as to Sprint and Bekbossynova. RA 86-92 (the "Trial Court Order"). Sprint and Bekbossynova timely appealed. RA 93-94.

The Appeals Court heard oral arguments on March 6, 2023. RA 96. On April 21, 2023, the Appeals Court issued an unpublished Order affirming the trial court's denial of the Motion as to Sprint, but reversing that decision as to the Boss Defendants. Addendum p. 31-32. No party sought reconsideration in the Appeals Court.

If the Order is not reversed, Plaintiffs will be permitted to pursue their unpaid wage claims in arbitration against the Boss Defendants, and simultaneously bring their substantively identical unpaid wage claims, arising out of the same body of work and seeking the identical recovery, against Sprint, to be decided by a jury in the Superior Court.

III. STATEMENT OF FACTS RELEVANT TO THE APPEAL

A. The Parties

Sprint was a telecommunication carrier that participated in the federal government's Lifeline Program and provided low-income consumers with phone services. *Martin v. Sprint United Mgmt. Co*., 273 F. Supp. 3d 404, 409-10 (S.D.N.Y 2017).[2] Sprint offered Lifeline products and/or services through its Assurance Wireless program. *Id.* at 410. Plaintiffs allege that Sprint "sells" Assurance

[2] Since April 2020, Assurance Wireless has been branded under the T-Mobile USA, LLC family due to the Sprint/T-Mobile merger.

Wireless products to customers "through promotions representatives who engage in door-to-door promotions." RA 11, ¶ 16; *see* RA 12, ¶¶ 18-20, 22.

Sprint did not directly employ promotions representatives. Rather, Sprint contracted with third-party Outreach Agencies ("OAs") to promote Lifeline services. *Martin*, 273 F. Supp. 3d at 410. The OAs outsourced the sales and marketing services for Sprint to independent sales offices ("ISOs"), like Boss. *Id.* at 410-11; RA 14, ¶¶ 41-42. ISOs then recruited and hired sales representatives, like Plaintiffs, to promote Assurance Wireless's products. *See* RA 11, ¶¶ 14, 17.

B. Plaintiffs' Claims Against Sprint and the Boss Defendants

Plaintiffs assert, through a joint employment theory, that Sprint, Boss, and Bekbossynova were *each* their employer and *together* controlled the work that serves as the basis for their claims. While Plaintiffs elected to assert claims against Sprint and the Boss Defendants in separate enumerated paragraphs of the Complaint, the substance of those allegations is identical, based on the same body of work, and seek the same pool of recovery. *See, e.g.*, RA 12, ¶ 26 and 14, ¶ 46 ("[Sprint and Boss/Bekbossynova] did not pay Plaintiffs and other promotions representatives the wages owed to them."); RA 13, ¶ 27 and 15, ¶ 47 ("[Sprint and Boss] did not pay Plaintiffs and other promotions representatives an hourly rate equal to minimum wage for all of the hours that they [worked]"); RA 13, ¶ 28 and 15, ¶ 48 ("[Sprint and Boss/Bekbossynova] did not pay Plaintiffs or other promotions representatives

an hourly rate equal to one and one half times their regular hourly rate for all of the hours that they worked in excess of 40 during a workweek"). Plaintiffs also assert the same legal claims against all Defendants, in substantively identical and parallel counts. *See* RA 20-22, Counts II, V, VIII (Minimum Wage claims against all Defendants); RA 20-22, Counts III, VI, IX (Overtime claims against all Defendants).

Plaintiffs do not plead any claim against Sprint that is factually or legally distinct from their claims against the Boss Defendants. *See* RA 19-22, Counts I-IX (identical claims for unpaid wages, minimum wage, and overtime against each Defendant). The sole distinction is that Plaintiffs' claims against the Boss Defendants acknowledge a direct employment relationship, while their claims against Sprint are pled on a joint employment theory, for exactly the same work.[3]

[3] Ironically, Plaintiffs' claims against Sprint manifest exactly the joint employment theory that this Court rejected in *Jinks*, which also involved individuals who worked on the Assurance Wireless campaign. At oral argument in *Jinks*, Justice Wendlandt noted that extending the joint employment standard to reach a corporate telecommunications provider that stood in the same posture that Sprint holds in the present action would be contrary to common sense. Transcript of Oral Argument, *Jinks v. Credico (USA) LLC* (SJC-13106). Suffolk University Law School/Massachusetts Supreme Judicial Court: SJC Oral Arguments. Retrieved at 14:00 https://boston.suffolk.edu/sjc/pop.php?csnum=SJC_13106 (Wendlandt, J. – Q: "Why are your clients under your tests [*i.e.*, M.G.L. c. 149, § 148B] not employees of Verizon?" A: "My guess would be that would be a step too far." Q: "But I'm just applying the test that you suggest, right, 148B, and under 148B if you apply the test as you suggest it should be applied, I conclude they're employees of Verizon. Where does it end? That is, we have an obligation to interpret statutes with common sense, and it sounds like you're saying it lacks common sense to extend this to Verizon, but they're providing services to Verizon." A: "They are

See Jinks v. Credico (USA) LLC, 488 Mass. 691, 701-04 (2021) (adopting federal standard for joint employment under Massachusetts wage laws).[4] While this legal theory allows Plaintiffs to pursue their identical claims against a broader array of potential employers beyond their direct employer, it has no impact on the substance or the merits of the legal claims they bring or on the total recovery they seek.

C. Plaintiffs' Employment Agreements with Boss

Plaintiffs each entered into an At-Will Employment Agreement with Boss as a condition of their employment. RA 25-38 (Affidavit of Kuralay Bekbossynova, ¶¶ 3-6, and Exhibits A-C thereto) (together, the "Employment Agreements"). As the Appeals Court recognized, the Employment Agreements each contain a mandatory arbitration provision, which states:

> **MUTUAL ARBITRATION OF ALL CLAIMS:** Any claims that Employee may have against the Company (except for workers' compensation or unemployment insurance benefits), and any claims the Company may have against Employee shall be resolved by an arbitrator and not in a court proceeding. The arbitration agreement is explained in detail in the Mutual Arbitration of All Claims Agreement, which is provided herewith and incorporated herein by reference.

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providing services for Verizon." Q: "So where does it end? How do I find the limiting principle to the test that you're suggesting?").

[4] Sales representatives working on the Assurance Wireless campaign were also held not to be jointly employed by Sprint in a series of rulings from the U.S. District Court for the Southern District of New York and the Second Circuit Court of Appeals. *Vasto v. Credico (USA) LLC*, No. 15 CIV. 9298 (PAE), 2017 WL 4877424, at *1 (S.D.N.Y. Oct. 27, 2017), *aff'd*, 767 F. App'x 54 (2d Cir. 2019); *Martin*, 273 F. Supp. 3d at 408.

RA 28, 33, 38. They also explicitly state in bold, capital letters, **"BY ACCEPTING EMPLOYMENT WITH COMPANY, OR CONTINUING TO REMAIN EMPLOYED BY COMPANY, YOU ARE ACKNOWLEDGING THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE TERMS OF THIS AT-WILL EMPLOYMENT AGREEMENT."** *Id.*

IV. STATEMENT OF POINTS WITH RESPECT TO WHICH FURTHER APPELLATE REVIEW IS SOUGHT

In *Machado*, this Court held that equitable estoppel is appropriate "when a signatory raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the [arbitration agreement]." 471 Mass. at 211. Sprint seeks further appellate review on one distinct question: is pleading substantively identical factual and legal claims, seeking one body of recovery, the type of "substantially interdependent and concerted misconduct" held in *Machado* to warrant application of equitable estoppel, even where those claims are pled against the signatory and non-signatory in separate paragraphs of a complaint?

Both the trial court and the Appeals Court answered this question in the negative, elevating form over substance, in terms of the interplay between the allegations in a complaint and the doctrine of equitable estoppel. Those decisions, if allowed to stand, eviscerate the equitable estoppel doctrine by allowing plaintiffs to elide their obligations to arbitrate a dispute by resort to the simple artifice of

repetition and formatting. Indeed, plaintiffs seeking to avoid arbitration of claims pled jointly and severally against multiple defendants could simply plead those claims in separate paragraphs of a complaint in order to create the opportunity for duplicative recovery – and the prospect of or inconsistent results by prosecuting identical claims in parallel forums.

As this Court has recognized, arbitration plays an important role in the legal system, and clear judicial guidance on the scope of the equitable estoppel doctrine is important to maintain the viability of arbitration by preventing disputes from being splintered between arbitral and judicial venues. *See* M.G.L. c. 211A, § 11; Mass. R. App. P. 27.1; *see also Papadopoulos v. Target Corp.*, 457 Mass. 368, 382 (2010); *Harhen v. Brown*, 431 Mass. 838, 847 (2000) (granting further appellate review when Appeals Court misinterpreted or disregarded precedent); *City of Bos. v. Bos. Police Patrolmen's Ass'n*, 443 Mass. 813, 814 (2005) (granting further appellate review to address negative public policy implications of appellate decision).

V. WHY FURTHER APPELLATE REVIEW IS WARRANTED

A. The Appeals Court Improperly Narrowed the Standard for Equitable Estoppel

Under *Machado*, equitable estoppel is appropriate "when a signatory raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." 471 Mass. at 211. In order to determine whether alleged conduct is sufficiently "interdependent and

concerted misconduct" to warrant equitable estoppel, the reviewing court must evaluate "all of 'the relationships of persons, wrongs, and issues' in the case." *Id.* at 211 (citation omitted). In applying this standard to the facts of *Machado*, this Court considered the *substance* of the allegations, noting that plaintiffs in the case had "consistently charged both [defendants] with equal wrongs." *Id.* at 216. It then explained that "[i]n assessing whether a plaintiff has advanced sufficient allegations of concerted misconduct, courts frequently look at the face of the complaint." *Id.* at 215. It is abundantly evident, however, that the relevant evaluation of plaintiffs' claims against defendants in *Machado* went beyond the mere form of the pleading. 471 Mass. at 216 (noting that plaintiffs' fundamental contention was that "both defendants, 'together,' subjected them to 'numerous misrepresentations' and 'misclassified' them as independent contractors").

Rather than consider the substance of the allegations in the Complaint, the Appeals Court applied a narrow, formalistic analysis, focusing on the fact that Plaintiffs "crafted separate counts in the complaint against each defendant," and never used the phrase "in concert" in describing the Defendants' conduct. Addendum p. 29.

First, the Appeals Court's reliance on "separate counts" fails to consider – or even acknowledge – that Plaintiffs assert *identical* legal claims against Sprint and the Boss Defendants and accuse all defendants equally of one alleged wrong: failure

to properly pay for all hours worked. *See*, *e.g.*, RA 12, ¶ 26 and 14, ¶ 46 ("[Sprint and Boss/Bekbossynova] did not pay Plaintiffs and other promotions representatives the wages owed to them."); RA 13, ¶ 27 and 15, ¶ 47 ("[Sprint and Boss/Bekbossynova] did not pay Plaintiffs and other promotions representatives an hourly rate equal to minimum wage for all of the hours that they [worked]"); RA 13, ¶ 28 and 15, ¶ 48 ("[Sprint and Boss/Bekbossynova] did not pay Plaintiffs or other promotions representatives an hourly rate equal to one and one half times their regular hourly rate for all of the hours that they worked in excess of 40 during a workweek"); RA 20-22, Counts II, V, VIII (Minimum Wage claims against all Defendants); RA 20-22, Counts III, VI, IX (Overtime claims against all Defendants). That singular "wrong" (i.e., failure to properly pay for all hours worked) is what Plaintiffs seek to "right" through this litigation.

Second, while Plaintiffs' Complaint avoids use of the term "in concert," Plaintiffs' allegations make clear that Plaintiffs contend that Sprint and the Boss Defendants act in "partnership," such that the Boss Defendants "recruit individuals to promote wireless services for Assurance Wireless." RA 11, ¶ 17. It is that "partnership" that gives rise to Plaintiffs' legal claims against all defendants. *See* RA 19-22, Counts I-IX (bringing identical claims for unpaid wages, minimum wage, and overtime against each Defendant). In this regard, the Appeals Court's Order imports a focus on express allegations of concerted misconduct that this Court

considered and rejected in *Machado*. 471 Mass. at 216, n.17 (recognizing that some jurisdictions limit application of equitable estoppel to circumstances involving "allegations of pre-arranged, collusive behavior between the signatory and nonsignatory defendants," without adopting that limitation for purposes of "concerted misconduct" standard under Massachusetts law).

Third, the Appeals Court erred when it found that Plaintiffs' claims "rely on differing facts," surmising that Plaintiffs' claims against the Boss Defendants "are based on an express contractual agreement," while their claims against Sprint arise under a theory of joint employment. Addendum p. 30. This finding was plainly erroneous. Nowhere do Plaintiffs assert a claim for breach of contract against the Boss Defendants, nor do they bring "factual allegations regarding actions of Sprint" (Addendum p. 30) that differ in any substantive respect from their allegations against the Boss Defendants. To be clear, Plaintiffs do not assert that they had any relationship with Sprint, other than through the work that they performed selling Sprint products in their employment with Boss, and they do not claim that Sprint owes them anything other than the very same wages they seek to recover from Boss.[5]

[5] Plaintiffs do accuse Sprint of certain additional conduct in an effort to bolster their joint employer theory of liability, including alleging that Sprint provided them with "scripts to use when selling wireless services," and "an Assurance Wireless name badge and an Assurance Wireless uniform when selling wireless services . . ." RA 11-12, ¶¶ 18-19. These allegations have no impact on whether or not any Defendant committed minimum wage or overtime violations; they relate only to whether Sprint can be held liable for violations alleged to have occurred in the course

B. Equitable Estoppel is Particularly Appropriate in Joint Employment Cases

The Appeals Courts' Order fails to recognize that equitable estoppel is particularly appropriate in cases premised on vicarious liability, including where a plaintiff seeks to recover against two or more defendants as her ostensible joint employers. Such cases inherently present precisely the kind of "substantially interdependent" claims that threaten to produce wasteful parallel litigation and the prospect for inconsistent results that equitable estoppel is designed to avoid. As several courts have recognized, equitable estoppel is appropriate where the liability of the non-signatory defendant is premised on a joint employment theory. *See Reeves v. Enter. Prod. Partners, LP*, 17 F.4th 1008, 1013 (10th Cir. 2021) (where plaintiff asserted overtime claim against signatory to an arbitration agreement (his direct employer) and a non-signatory to the agreement (the alleged joint employer), equitable estoppel was appropriate because the misconduct at issue was "the fact that Enterprise did not pay [the plaintiff] overtime wages" and "the allegations of misconduct against the nonsignatory and the signatory are substantially interdependent" with those claims against the direct employer); *Maldonado v. Mattress Firm, Inc.*, No. 8:13-CV-292-T-33AEP, 2013 WL 2407086, at *5 (M.D.

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of Plaintiffs' employment with Boss. With respect to allegations bearing on the merits of Plaintiffs' claims, Plaintiffs allege that Sprint did all of the same things that they allege the Boss Defendants did. *Compare* RA 12-13, ¶¶ 25-32 with RA 14-15, ¶¶ 45-52.

Fla. June 3, 2013) (applying equitable estoppel to require plaintiff to arbitrate joint employer claim against non-signatory). Further appellate review by this Court is thus appropriate to preserve application of the equitable estoppel doctrine in the context of claims asserted on a theory of vicarious liability, including those brought on a joint employer basis.

C. Fairness Requires that Plaintiffs Arbitrate Their Claims Against Sprint

The Appeals Court erred when it disregarded the burdens and other consequences of litigating identical claims in two separate and parallel forums, describing the potential impact as limited to "some overlap of witnesses and evidence." Addendum p. 30. This finding misapprehends the nature of the claims Plaintiffs assert against the respective Defendants, and in light of the substantial overlap between Plaintiffs' claims against Sprint and Plaintiffs' claims against Boss Defendants, separate proceedings would be exceedingly wasteful and prejudicial.

This action presents much more than "some" overlap between the witnesses and evidence as between Plaintiffs' claims against Sprint and the Boss Defendants. The fundamental issues posed by both sets of claims is the number of hours of work that Plaintiffs performed, what Plaintiffs were paid, and whether Plaintiffs' jobs were subject to or exempt from minimum wage and overtime pay requirements. The witnesses and evidence as to all of these issues are entirely identical. The facts and evidence implicated by Plaintiffs' claims against Sprint thus entirely subsume the

facts and evidence implicated by their claims against the Boss Defendants, and the only difference between the two cases will be those few additional points that relate to whether Sprint can be held liable for Boss's employment-related conduct. Separate proceedings would thus be almost entirely duplicative. Courts have recognized that absolute parity in claims against defendants is not necessary for equitable estoppel, and where there is substantial overlap in the relevant facts, arbitration of all of a plaintiff's intertwined claims is proper. *Maldonado v. Mattress Firm, Inc.*, No. 8:13-CV-292-T-33AEP, 2013 WL 2407086, at *5 (M.D. Fla. June 3, 2013) (requiring plaintiffs to arbitrate joint employer claim against non-signatory to avoid two separate proceedings on plaintiff's "fundamentally related claims against the Defendants as these claims likely involve substantially overlapping issues of fact"); *Roberts v. Obelisk, Inc.*, No. 18CV2898-LAB (BGS), 2019 WL 1902605, at *7 (S.D. Cal. Apr. 29, 2019) ("Where the claims against the signatory and nonsignatory are intertwined, allowing the plaintiff to evade arbitration with the nonsignatory would undermine the efficiency of arbitration and run the risk of duplicative decisions.").

The touchstone for any equitable doctrine is fairness and, as such, the potential for highly inefficient and duplicative proceedings should not be divorced from application of equitable estoppel in the arbitration context. *Silverwood Partners, LLC v. Wellness Partners, LLC*, 91 Mass. App. Ct. 856, 863 (2017) (citing *Grigson*

v. Creative Artists Agency L.L.C., 210 F.3d 524, 528 (5th Cir. 2000)) ("The linchpin for equitable estoppel is equity – fairness.").

Further, equitable estoppel is not merely a matter of efficiency when plaintiffs assert substantively identical claims against multiple defendants and seek to pursue them in parallel forums. This procedural posture poses an acute risk of the parallel forums reaching contrary results. For example, an arbitrator might find that Plaintiffs worked long hours and are entitled to minimum wage and overtime payments, while a Superior Court jury found that they had been paid all sums due. This risk of inconsistent results provides an independent and compelling grounds for application of equitable estoppel. *See In re Daily Fantasy Sports Litig.*, No. MDL 16-02677-GAO, 2019 WL 6337762, at *11 (D. Mass. Nov. 27, 2019) (compelling arbitration against nonsignatory on equitable estoppel grounds).

Any assertion that arbitration would be "foisted" on Plaintiffs by application of the equitable estoppel doctrine should be weighed against the reality that Plaintiffs voluntarily entered into an arbitration agreement as a condition of their employment. They, in fact, acknowledge that they are required to arbitrate against Boss, and they curiously also concede they are obligated to arbitrate against Bekbossynova, even though she is not a signatory to the arbitration agreement. *See* RA 42, 44, 52. Plaintiffs made a strategic choice to plead identical claims against both Sprint and the Boss Defendants. To require them to adjudicate these claims in arbitration

against all Defendants is inherently equitable. *See Machado*, 741 Mass. at 210 (noting that federal courts are generally "willing to estop a signatory from avoiding arbitration with a nonsignatory") (internal citation omitted); *Silverwood Partners*, 91 Mass. App. Ct. at 863 (applying equitable estoppel to avoid "substantially undermin[ing] the [] arbitration proceedings") (citing *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999) (application of equitable estoppel necessary to prevent arbitration proceedings between signatories from being "rendered meaningless").

VI. CONCLUSION

Plaintiffs' claims in this action form one, unitary dispute, and it would be fundamentally unfair to allow them to divide this litigation into two proceedings in parallel forums. The trial court and Appeals Court incorrectly denied Sprint's Motion to Compel Arbitration based on an errant application of the equitable estoppel doctrine that this Court recognized in *Machado*. This formalistic approach undermines the purpose of the doctrine and the arbitration process. For the foregoing reasons, Sprint requests this Court grant further appellate review, which broadly affects the public interest and the interests of justice.

Respectfully submitted,

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ADDENDUM

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COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

22-P-950

ERICA DIPLACIDO & others[1]

vs.

ASSURANCE WIRELESS OF SOUTH CAROLINA, LLC, & others.[2]

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendants jointly appeal from an order of a Superior Court judge that refused to compel arbitration of the plaintiffs' claims. In July 2019, the plaintiffs filed a class action complaint, alleging that the various defendants violated Massachusetts wage laws and failed to pay the plaintiffs fully for work performed. As set forth in the complaint, the defendants fall into two groups: (1) the defendants Boss Enterprises and Kuralay Bekbossynova (the Boss defendants), with whom the plaintiffs had a written employment agreement that contained an arbitration clause, and (2) defendants Assurance Wireless of South Carolina and Sprint

[1] Tyler Keeley and Ryan LaBrie.

[2] Kuralay Bekbossynova; Boss Enterprise, Inc.; and Sprint Corporation.

Corporation (collectively, Sprint), with whom the plaintiffs did not have a written agreement but whom the plaintiffs allege were also their employer. The judge denied arbitration as to the Boss defendants on the ground that the motion was moot, due to his (incorrect) understanding that the claims as to Boss had been settled. He denied arbitration as to Sprint because Sprint was a nonsignatory to the arbitration agreement, and because in light of the nature of the plaintiffs' claims, Sprint could not compel arbitration under a theory of equitable estoppel. For the following reasons, we affirm the denial of the motion as to Sprint, although arbitration is appropriate as to the Boss defendants.

Background. We summarize the relevant background as follows. Sprint Corporation and Assurance Wireless of South Carolina, LLC, are corporations that jointly sell wireless services. Boss Enterprise, Inc. (Boss), is a corporation that entered a partnership with Sprint to obtain the services of representatives to go door to door to market Sprint's wireless services. Appellant Kuralay Bekbossynova is the president and treasurer of Boss. The plaintiffs are some of the representatives who went door to door in 2018 to market Sprint's wireless services.

Before performing their door-to-door marketing, each plaintiff signed a document labeled "Employment Agreement" (the employment agreements). The employment agreements contained an arbitration provision which provided that "[a]ny claims that an Employee may have against the Company (except for worker's compensation or unemployment insurance benefits), and any claims the Company may have against Employee shall be resolved by an arbitrator and not in a court proceeding." The employment agreements listed "Company/Employer" as Boss Enterprise and each respective plaintiff as "Employee." The employment agreements also stated that the arbitration provision in the employment agreements is explained more fully in a separate document (the arbitration agreements).

On July 12, 2019, the plaintiffs filed a class action complaint, alleging nine claims in total, with three claims against each defendant individually[3]: failure to pay plaintiffs all the wages to which they were entitled; violation of minimum wages laws; and failure to pay one and a half times the regular hourly rate for overtime. On February 11, 2021, all defendants jointly moved to compel arbitration, arguing that the employment agreements and the arbitration agreements compelled the plaintiffs to arbitrate their claims against all defendants.

[3] Defendants Sprint Corporation and Assurance Wireless of South Carolina, LLC are collectively treated as Sprint.

The plaintiffs filed an opposition to the defendants' motion to compel, and the motion judge heard oral arguments on July 21, 2021. On July 29, 2021, the motion judge denied the motion as to the claims against Sprint. In his decision, the judge erroneously stated, that the "plaintiffs settled their claims against Boss and Bekbossynova" and accordingly found that the motion to compel as it related to those defendants was moot.

Discussion. All parties agree that Sprint was not a party to the employment agreements or the incorporated arbitration agreements. The defendants argue that despite this, the judge erred in denying their motion to compel arbitration as to Sprint for two reasons. First, they argue that the judge erred in concluding that the doctrine of equitable estoppel did not apply in this case. Second, they contend that the judge based his decision on an untrue fact: that Boss and Bekbossynova had settled with the plaintiffs. In reviewing this decision, we defer to the motion judge on questions of fact unless they are clearly erroneous, Licata v. GGNSC Malden Dexter LLC, 466 Mass. 793, 796 (2014), but we review the denial of the motion to compel arbitration de novo. Machado v. System4 LLC, 471 Mass. 204, 208 (2015). We address each of the defendants' arguments in turn.

1. Equitable estoppel. "[I]t remains a fundamental principle that arbitration is a matter of contract, not

something to be foisted on the parties at all costs." Landry v. Transworld Sys. Inc., 485 Mass. 334, 338 (2020) (citations and quotations omitted). Despite this general principle, "[e]quitable estoppel typically allows a nonsignatory to compel arbitration in either of two circumstances: (1) when a signatory must rely on the terms of the written agreement in asserting its claims against the nonsignatory or (2) when a signatory raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." Machado, 471 Mass. at 211 (citations and quotations omitted). Defendants argue, as they did below, that the second circumstance applies because the plaintiffs' claims against the Boss defendants and Sprint are substantially interdependent and alleged concerted misconduct. We disagree.

To determine whether the claims of misconduct are substantially interdependent and concerted, we first look to the face of the complaint. See Machado, 471 Mass. at 215. Here, the plaintiffs have crafted separate counts in the complaint against each defendant based upon their individual actions and have not alleged that the misconduct was conducted in concert. Compare Id. at 215-216 (finding equitable estoppel applies where "plaintiffs have lumped the two defendants together[and]. . . consistently charged both [defendants] with equal wrongs, [and]

fail[ed] to distinguish them."). Moreover, it is evident from the complaint that the claims against the two defendants actually rely on differing facts: the claims against the Boss defendants are based upon an express contractual agreement and allegations of what the plaintiffs did for Boss; the claims against the Sprint defendants are not based upon that contractual agreement, but instead are based upon factual allegations regarding actions of Sprint, and upon the contention that the plaintiffs were "actually the employees" of Sprint, and that Sprint misclassified them as independent contractors.

Accordingly, the complaint expressly does not "lump together" the Boss defendants and Sprint, and the theory of liability as to Sprint is distinct, requiring proof of facts that are not necessary as to the claims against Boss. The case is thus quite different than Machado, supra. While we recognize that the claims against the Boss defendants and the claims against Sprint will have some overlap of witnesses and evidence, that is not the test for whether a nonsignatory to an arbitration agreement can compel arbitration.[4] A plaintiff who did not enter an arbitration agreement with another party should not be forced to arbitrate their separate and distinct claims

[4] Our de novo review of this motion to compel arbitration is not, and cannot be, solely based on judicial economy. See Miller v. Cotter, 448 Mass. 671, 684-685 (2007).

against that party. Here the plaintiffs have treated the defendants differently for substantive reasons, and equitable estoppel does not bind the plaintiffs to arbitrate their claims against Sprint in this case.

2. Untrue fact. All parties agree that the judge's factual finding that that "plaintiffs settled their claims against Boss and Bekbossynova" was erroneous. The record does not support, however, the defendants' argument that the judge's ruling against Sprint as to the motion to compel was based on that fact. Even if it was, our review of the motion to compel is de novo and does not rely on this error. For that reason, we affirm the judge's ruling as it relates to Sprint. However, inasmuch as the plaintiffs agree that they had an express arbitration agreement with Boss, and because the plaintiffs did not settle their claims with the Boss defendants, we hold that the motion to compel as it related to the Boss defendants was not moot. Accordingly, the denial of the motion to compel arbitration as to the Boss defendants was in error and must be reversed.

Conclusion. So much of the order as denied the motion to compel arbitration as to the defendants Assurance Wireless of South Carolina, LLC, and Sprint Corporation is affirmed. So much of the order as denied the motion to compel arbitration as to the defendants Boss Enterprises, Inc. and Kuralay

Bekbossynova is reversed. The matter is remanded to the Superior Court for further proceedings consistent with this decision.

So ordered.

By the Court (Blake, Englander & Walsh, JJ.[5]),

Joseph F. Stanton

Clerk

Entered: April 21, 2023.

[5] The panelists are listed in order of seniority.

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston

In the case no. 22-P-950

ERICA DIPLACIDO & others

vs.

ASSURANCE WIRELESS OF SOUTH CAROLINA, LLC, & others.

Pending in the Superior Court for the County of Suffolk

Ordered, that the following entry be made on the docket:

So much of the order as denied the motion to compel arbitration as to the defendants Assurance Wireless of South Carolina, LLC, and Sprint Corporation is affirmed. So much of the order as denied the motion to compel arbitration as to the defendants Boss Enterprises, Inc., and Kuralay Bekbossynova is reversed. The matter is remanded to the Superior Court for further proceedings consistent with the memorandum and order of the Appeals Court.

By the Court,

Joseph F. Stanton, Clerk

Date April 21, 2023.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure

I, Barry J. Miller, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16 (a)(13) (addendum);
Mass. R. A. P. 16 (e) (references to the record);
Mass. R. A. P. 18 (appendix to the briefs);
Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents);
Mass. R. A. P. 21 (redaction); and
. Mass. R. A. P. 27.1 (further appellate review).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the proportional font Times New Roman at size 14, and contains 1,837, total non-excluded words as counted using the word count feature of Microsoft Word 2013.

/s/ Barry J. Miller

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(617) 948-4800

Date: 05/11/2023

CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on May 11, 2023, I have made service of this Application for Further Appellate Review and Appendix upon the attorney of record for each party, by the Electronic Filing System on:

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Supreme Judicial Court

FOR THE COMMONWEALTH OF MASSACHUSETTS

SJC FAR No.

Suffolk, ss.

ERICA DiPLACIDO, ET AL.,
Plaintiffs-Appellees,

- VS. -

ASSURANCE WIRELESS OF SOUTH CAROLINA LLC, SPRINT CORPORATION, BOSS ENTERPRISE, INC., KURALAY BEKBOSSYNOVA,
Defendants-Appellants.

On Appeal From The Superior Court Of Suffolk County

Appeals Court No. 22-P-950

RECORD APPENDIX

Date: 05/11/2023

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Counsel for Appellants
Assurance Wireless of South Carolina LLC
and Sprint Corporation

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- File Date
- 08/20/2020
- DCM Track:
- F - Fast Track
- Initiating Action:
- Services, Labor and Materials
- Status Date:
- 08/20/2020
- Case Judge:
-
- Next Event:
-

All Information | Party | Event | Tickler | Docket | Disposition

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/20/2020	Attorney appearance On this date Brook S Lane, Esq. added for Plaintiff Erica DiPlacido		
08/20/2020	Attorney appearance On this date Brook S Lane, Esq. added for Plaintiff Tyler Keeley on behalf of Themselves and all others similarly situated		
08/20/2020	Attorney appearance On this date Brook S Lane, Esq. added for Plaintiff Ryan LaBrie on behalf of Themselves and all others similarly situated		
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08/20/2020	Attorney appearance On this date Alison H Silveira, Esq. added for Defendant Sprint Corporation		
08/20/2020	Attorney appearance On this date Molly Clayton Mooney, Esq. added for Defendant Sprint Corporation		
08/20/2020	Opposition to Sprint Solutions Inc.'s (P#8) Motion to Dismiss filed by Erica DiPlacido on behalf of Themselves and all others similarly situated, Tyler Keeley on behalf of Themselves and all others similarly situated, Ryan LaBrie on behalf of Themselves and all others similarly situated	9	Image
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01/08/2021	Attorney appearance On this date Corinne Hood Greene, Esq. added for Defendant Boss Enterprise Inc		
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04/27/2021	The following form was generated: Notice to Appear Sent On: 04/27/2021 12:54:10 Notice Sent To: Brook S Lane, Esq. Fair Work P.C. 192 South St Suite 450, Boston, MA 02111 Notice Sent To: Hillary Schwab, Esq. Fair Work, P.C. 192 South St Suite 450, Boston, MA 02111 Notice Sent To: Barry James Miller, Esq. Seyfarth Shaw LLP Two Seaport Lane Suite 300, Boston, MA 02210 Notice Sent To: Alison H Silveira, Esq. Seyfarth Shaw LLP Two Seaport Lane Suite 300, Boston, MA 02210 Notice Sent To: Molly Clayton Mooney, Esq. Seyfarth Shaw 2 Seaport Lane Suite 300, Boston, MA 02210 Notice Sent To: Corinne Hood Greene, Esq. Greene and Hafer, LLC 529 Main St Suite 200, Charlestown, MA 02129		
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07/21/2021	The following form was generated: Notice to Appear Sent On: 07/21/2021 15:33:42 Notice Sent To: Brook S Lane, Esq. Fair Work P.C. 192 South St Suite 450, Boston, MA 02111 Notice Sent To: Hillary Schwab, Esq. Fair Work, P.C. 192 South St Suite 450, Boston, MA 02111 Notice Sent To: Barry James Miller, Esq. Seyfarth Shaw LLP Two Seaport Lane Suite 300, Boston, MA 02210 Notice Sent To: Alison H Silveira, Esq. Seyfarth Shaw LLP Two Seaport Lane Suite 300, Boston, MA 02210 Notice Sent To: Molly Clayton Mooney, Esq. Seyfarth Shaw 2 Seaport Lane Suite 300, Boston, MA 02210 Notice Sent To: Corinne Hood Greene, Esq. Greene and Hafer, LLC 529 Main St Suite 200, Charlestown, MA 02129		
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10/15/2021	Plaintiffs(s) Erica DiPlacido on behalf of Themselves and all others similarly situated, Tyler Keeley on behalf of Themselves and all others similarly situated, Ryan LaBrie on behalf of Themselves and all others similarly situated EMERGENCY motion filed to compel Discovery	18	Image
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01/03/2022	Endorsement on Submission of Joint Status Report (#22.0): ALLOWED (DATE 12/28/21) Allowed.. The evidentiary hearing scheduled for Jan, 2. 2022 is cancelled. The court adopts the further briefing schedule set out on page 3 of the motion. The court will conduct a hearing on the defendants motion to compel arbitration on March 9, 2022 at 2pm Notice 12/29/21		Image
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Due to system maintenance beginning approximately 5 pm on Tuesday, Nov 1st , 2022, this website will be unavailable until the maintenance is completed at approximately 7.00 pm.

1.b

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

20-1871-BLS1

Norfolk, ss. Civil Action No.

ERICA DIPLACIDO; TYLER KEELEY: RYAN LABRIE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

ASSURANCE WIRELESS OF SOUTH CAROLINA, LLC; SPRINT CORPORATION; BOSS ENTERPRISE, INC.; KURALAY BEKBOSSYNOVA, individually,

Defendants.

19 0882

PLAINTIFFS' CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

1. This is an action for unpaid wages, independent contractor misclassification, and related claims brought by Plaintiffs Erica DiPlacido, Tyler Keeley, and Ryan LaBrie, on behalf of themselves and all others similarly situated. Assurance Wireless of South Carolina, LLC, Sprint Corporation, Boss Enterprise, Inc., and Kuralay Bekbossynova employed Plaintiffs as promotions representatives. Plaintiffs now bring separate class claims against Defendants Assurance Wireless of South Carolina, LLC, Sprint Corporation, Boss Enterprise, Inc., and Kuralay Bekbossynova for violations of the Massachusetts Wage Act, M.G.L. c. 149, § 148, the Massachusetts Minimum Wage Law, M.G.L. c. 151, §§ 1-1B, and the Massachusetts Independent Contractor Statute, M.G.L. c. 149, § 148B. On behalf themselves and the putative class, Plaintiffs seek lost wages, treble damages, interest, costs, attorneys' fees, and all other relief to which they are entitled.

PARTIES

2. Plaintiff Erica DiPlacido is an adult individual residing in Malden, Massachusetts. She performed services for Defendants as a promotions representative in 2018.

3. Plaintiff Tyler Keeley is an adult individual residing in Halifax, Massachusetts. He performed services for Defendants as a promotions representative in 2018.

4. Plaintiff Ryan LaBrie is an adult individual residing in Lincoln, Rhode Island. He performed services for Defendants as a promotions representative in 2018.

5. Plaintiffs bring this claim on behalf of themselves and all others similarly situated, namely all individuals who provided services to Defendants as promotions representatives in Massachusetts and suffered the violations alleged herein. The proposed class meets the requirements of M.G.L. c. 149, § 150, M.G.L. c. 151, §§ 1B and 20, and/or Mass. R. Civ. P. 23 for class certification.

6. Defendant Assurance Wireless of South Carolina, LLC ("Assurance") is a limited liability company that is in the business of selling wireless services.

7. Defendant Sprint Corporation ("Sprint") is a corporation that is in the business of selling wireless services.

8. Defendant Boss Enterprise, Inc. ("Boss") is a domestic corporation that is in the business of marketing and selling various services and products, such as wireless service. Boss's principal office is located at 44 Billings Rd., Quincy, MA 02171.

9. Defendant Kuralay Bekbossynova is the President and Treasurer of Boss. Ms. Bekbossynova is a resident of Massachusetts.

JURISDICTION AND VENUE/AMOUNT IN CONTROVERSY

10. This Court has jurisdiction over this matter pursuant to Superior Court Rule 29, because the amount in controversy is more than $25,000 and less than $5,000,000.

11. Venue in Norfolk County Superior Court is proper under M.G.L. c. 223, § 1, because Plaintiffs performed work for Defendants in Norfolk County.

12. In compliance with M.G.L. c. 149, § 150, Plaintiffs filed Non-Payment of Wages and Workplace Complaint Forms with the Massachusetts Office of the Attorney General prior to initiating this litigation.

FACTS

13. Sprint and Assurance jointly operate as "Assurance Wireless" to sell wireless services to customers in various states, including Massachusetts.

14. Assurance Wireless uses various means to sell wireless services to its customers.

15. Assurance Wireless sells wireless services directly to customers through a website.

16. Assurance Wireless also sells wireless services to customers through promotions representatives who engage in door-to-door promotions.

17. Assurance Wireless obtains the services of its door-to-door promotions representatives by entering partnerships with third-party entities, like Boss, that recruit individuals to promote wireless services for Assurance Wireless.

18. Assurance Wireless requires that promotions representatives receive certain training concerning how to sell wireless services for it.

19. Assurance Wireless provides promotions representatives with scripts to use when selling wireless services for them and Assurance Wireless paperwork to be given to and signed by potential customers.

20. Assurance Wireless requires that promotions representatives wear an Assurance Wireless name badge and an Assurance Wireless uniform when selling wireless services for it.

21. promotions representatives represent themselves as representatives of Assurance Wireless when promoting wireless services for it, not Assurance Wireless's third-party partners.

22. Assurance Wireless requires that promotions representatives follow specific standards of conduct when selling wireless services for them.

23. During the three years preceding the filing date of the complaint, more than 40 different promotions representatives promoted Assurance Wireless's services for the company in Massachusetts.

24. Plaintiffs provided services to Assurance Wireless as door-to-door promotions representatives in Massachusetts by promoting wireless services for Assurance Wireless to members of the public.

25. Each day that Plaintiffs and other promotions representatives promoted wireless services for Assurance Wireless, at the beginning of every shift, they would report to the office of one of the Assurance Wireless's partners for meetings, trainings, or other administrative matters.

26. Assurance Wireless did not pay Plaintiffs and the other promotions representatives the wages owed to them.

27. Assurance Wireless did not pay Plaintiffs or other promotions representatives an hourly rate equal to minimum wage for all of the hours that they performed services for Assurance Wireless.

28. Assurance Wireless did not pay Plaintiffs or other promotions representatives an hourly rate equal to one and one half times their regular hourly rate for all of the hours that they worked in excess of 40 during a workweek for Assurance Wireless.

29. Assurance Wireless did not pay Plaintiffs or other promotions representatives for travel time.

30. Assurance Wireless did not reimburse Plaintiffs or other promotions representatives for travel expenses that they incurred while performing services for it.

31. Assurance Wireless made improper deductions from the wages of Plaintiffs and other promotions representatives, including deductions when customers did not pay for services.

32. Assurance Wireless did not provide Plaintiffs or other promotions representatives with any sick time, vacation time, or paid time off.

33. Assurance Wireless treated Plaintiffs and all promotions representatives who engaged in door-to-door promotions of wireless services for them as independent contractors.

34. However, Plaintiffs and the other promotions representatives are actually the employees of Assurance Wireless.

35. Plaintiffs and other promotions representatives are not free from control and direction in connection with their performance of services for Assurance Wireless.

36. Assurance Wireless retains the right to control and does control the work of Plaintiffs and other promotions representatives.

37. Plaintiffs and other promotions representatives perform services within the usual course of Assurance Wireless's business.

38. Assurance Wireless is in the business of selling wireless services, and the services performed by Plaintiffs and other promotions representatives was promoting sales of Assurance Wireless's wireless services.

39. Plaintiffs and other promotions representatives are not customarily engaged in an independently established trade, occupation, profession or business relating to the promotions of wireless services.

40. Instead, while employed with Assurance Wireless, Plaintiffs and other promotions representatives have typically promoted wireless services exclusively for Assurance Wireless.

41. Boss was one of the third-party entities that Assurance Wireless engaged to recruit and oversee individuals who would promote Assurance Wireless's wireless services and products through door-to-door promotions.

42. Ms. Bekbossynova is the President and Treasurer of Boss.

43. Boss is in the business of marketing and selling products and services door-to-door for third-parties, such as Assurance Wireless.

44. During the three years preceding the filing date of the complaint, Boss engaged the services of more than 40 different promotions representatives in Massachusetts.

45. Each day that Plaintiffs and other promotions representatives engaged in marketing and sales for Boss, at the beginning of every shift, they would report to Boss's office for meetings, trainings, or other administrative matters.

46. Boss did not pay Plaintiffs and the other promotions representatives the wages owed to them.

47. Boss did not pay Plaintiffs or other promotions representatives an hourly rate equal to minimum wage for all of the hours that they performed services for it.

48. Boss did not pay Plaintiffs or other promotions representatives an hourly rate equal to one and one half times their regular hourly rate for all of the hours that they worked in excess of 40 during a workweek for it.

49. Boss did not pay Plaintiffs or other promotions representatives for travel time.

50. Boss did not reimburse Plaintiffs or other promotions representatives for travel expenses that they incurred while performing services for it.

51. Boss made improper deductions from the wages of Plaintiffs and other promotions representatives, including deductions in the form of chargebacks when customers did not pay for services.

52. Boss did not provide Plaintiffs or other promotions representatives with any sick time, vacation time, or paid time off.

CLASS ACTION ALLEGATIONS

ASSURANCE

53. Plaintiffs bring claims against Assurance on behalf of themselves and others similarly situated, as he is authorized to do under M.G.L. c. 149, § 150 and M.G.L. c. 151, §§ 1B and 20.

54. Pursuant to M.G.L. c. 149, § 150, M.G.L. c. 151, §§ 1B and 20, and Mass. R. Civ. P. 23, Plaintiffs bring this action on behalf of themselves and all other individuals who have performed work as promotions representatives for Assurance in Massachusetts and have been misclassified as independent contractors and/or have otherwise been subject to the unlawful practices described herein.

55. Joinder is impracticable in this case due to the size and composition of the class, and nature of the claims and relief sought, the remedial purpose of the underlying claims, and because individual joinder would be inefficient, uneconomical, and could result in the deprivation of wage rights to aggrieved employees.

56. There are issues of law and fact common to all class members, because Assurance's practices similarly affected Plaintiffs and other individuals who promoted wireless services for them. The common questions of law and fact predominate over any questions affecting individual class members. The predominant questions of law or fact are clear, precise, well-defined, and applicable to Plaintiffs, as well as every absent member of the proposed class.

57. Plaintiffs' claims are typical of the claims of all members of the class, because Assurance subjected Plaintiffs and all other promotions representatives to the same unlawful practices and they suffered similar harms.

58. Plaintiffs will fairly and adequately represent the interests of the class because they do not have a conflict of interest with the class members. The undersigned counsel will fairly and adequately represent the class members' interests because they have substantial experience in this field.

59. A class action is superior in this case for several reasons including, but not limited to, the following: the case challenges Assurance's uniform employment classification and wage payment practices; many workers may be reluctant to bring claims individually for fear of retaliation; some class members may not have the motivation or resources to bring their claims individually; and it would be an inefficient use of scarce judicial resources to require each employee affected by the practices challenged herein to bring his or her own individual claim.

SPRINT

60. Plaintiffs bring claims against Sprint on behalf of themselves and others similarly situated, as he is authorized to do under M.G.L. c. 149, § 150 and M.G.L. c. 151, §§ 1B and 20.

61. Pursuant to M.G.L. c. 149, § 150, M.G.L. c. 151, §§ 1B and 20, and Mass. R. Civ. P. 23, Plaintiffs bring this action on behalf of themselves and all other individuals who have performed work as promotions representatives for Sprint in Massachusetts and have been misclassified as independent contractors and/or have otherwise been subject to the unlawful practices described herein.

62. Joinder is impracticable in this case due to the size and composition of the class, and nature of the claims and relief sought, the remedial purpose of the underlying claims, and because individual joinder would be inefficient, uneconomical, and could result in the deprivation of wage rights to aggrieved employees.

63. There are issues of law and fact common to all class members, because Sprint's practices similarly affected Plaintiffs and other individuals who promoted wireless services for them. The common questions of law and fact predominate over any questions affecting individual class members. The predominant questions of law or fact are clear, precise, well-defined, and applicable to Plaintiffs, as well as every absent member of the proposed class.

64. Plaintiffs' claims are typical of the claims of all members of the class, because Sprint subjected Plaintiffs and all other promotions representatives to the same unlawful practices and they suffered similar harms.

65. Plaintiffs will fairly and adequately represent the interests of the class because they do not have a conflict of interest with the class members. The undersigned counsel will

fairly and adequately represent the class members' interests because they have substantial experience in this field.

66. A class action is superior in this case for several reasons including, but not limited to, the following: the case challenges Sprint's uniform employment classification and wage payment practices; many workers may be reluctant to bring claims individually for fear of retaliation; some class members may not have the motivation or resources to bring their claims individually; and it would be an inefficient use of scarce judicial resources to require each employee affected by the practices challenged herein to bring his or her own individual claim.

BOSS AND MS. BEKBOSSYNOVA

67. Plaintiffs bring claims against Boss and Ms. Bekbossynova on behalf of themselves and others similarly situated, as they are authorized to do under M.G.L. c. 149, § 150 and M.G.L. c. 151, §§ 1B and 20.

68. Pursuant to M.G.L. c. 149, § 150, M.G.L. c. 151, §§ 1B and 20, and Mass. R. Civ. P. 23, Plaintiffs bring this action on behalf of themselves and all other individuals who have performed marketing and sales services for Boss in Massachusetts and have been subject to the unlawful practices described herein.

69. Joinder is impracticable in this case due to the size and composition of the class, and nature of the claims and relief sought, the remedial purpose of the underlying claims, and because individual joinder would be inefficient, uneconomical, and could result in the deprivation of wage rights to aggrieved employees.

70. There are issues of law and fact common to all class members, because Boss's practices similarly affected Plaintiffs and other individuals who engaged marketing and sales for it. The common questions of law and fact predominate over any questions affecting individual

class members. The predominant questions of law or fact are clear, precise, well-defined, and applicable to Plaintiffs, as well as every absent member of the proposed class.

71. Plaintiffs' claims are typical of the claims of all members of the class, Boss subjected Plaintiffs and all other promotions representatives to the same unlawful practices and they suffered similar harms.

72. Plaintiffs will fairly and adequately represent the interests of the class because they do not have a conflict of interest with the class members. The undersigned counsel will fairly and adequately represent the class members' interests because they have substantial experience in this field.

73. A class action is superior in this case for several reasons including, but not limited to, the following: the case challenges Boss's uniform wage payment practices; many workers may be reluctant to bring claims individually for fear of retaliation; some class members may not have the motivation or resources to bring their claims individually; and it would be an inefficient use of scarce judicial resources to require each employee affected by the practices challenged herein to bring his or her own individual claim.

COUNT I
UNPAID WAGES – M.G.L. c. 149, §§ 148 and 150
(As to Assurance)

As described above, Assurance misclassified Plaintiffs and the class members as independent contractors when they are actually employees of Assurance. As a result, Plaintiffs and the class members have not received all wages to which they are entitled, have not been properly compensated for travel time, have had improper deductions taken from their pay, have been required to bear expenses relating to their employment that Assurance should have paid, and have been denied other benefits of employment to which they are entitled, including paid

sick time and paid vacation time. This conduct is in violation of the Massachusetts Wage Act, M.G.L. c. 149, §§ 148 and 150 and the Massachusetts Independent Contractor Statute, M.G.L. c. 149, § 148B (and/or the common law). This claim is brought against Assurance on behalf of Plaintiffs and other similarly situated individuals pursuant to M.G.L. c. 149, § 150.

COUNT II
MINIMUM WAGE – M.G.L. c. 151, § 1
(As to Assurance)

As described above, Plaintiffs and the class members have not received the required minimum wages required by M.G.L. c. 151, § 1 for all hours worked, had Assurance and Sprint properly classified them as employees, either under M.G.L. c. 149, § 148B or common law. This claim is brought pursuant to M.G.L. c. 151, § 20.

COUNT III
OVERTIME – M.G.L. c. 151, § 1A
(As to Assurance)

As described above, Plaintiffs and the class members have not received one and one half times their regular hourly rates required by M.G.L. c. 151, § 1A for all hours worked in excess of 40 during a workweek, had Assurance and Sprint properly classified them as employees, either under M.G.L. c. 149, § 148B or common law. This claim is brought pursuant to M.G.L. c. 151, § 1B.

COUNT IV
UNPAID WAGES – M.G.L. c. 149, §§ 148 and 150
(As to Sprint)

As described above, Sprint misclassified Plaintiffs and the class members as independent contractors when they are actually employees of Assurance. As a result, Plaintiffs and the class members have not received all wages to which they are entitled, have not been properly compensated for travel time, have had improper deductions taken from their pay, have been

required to bear expenses relating to their employment that Sprint should have paid, and have been denied other benefits of employment to which they are entitled, including paid sick time and paid vacation time. This conduct is in violation of the Massachusetts Wage Act, M.G.L. c. 149, §§ 148 and 150 and the Massachusetts Independent Contractor Statute, M.G.L. c. 149, § 148B (and/or the common law). This claim is brought against Assurance on behalf of Plaintiffs and other similarly situated individuals pursuant to M.G.L. c. 149, § 150.

COUNT V
MINIMUM WAGE – M.G.L. c. 151, § 1
(As to Sprint)

As described above, Plaintiffs and the class members have not received the required minimum wages required by M.G.L. c. 151, § 1 for all hours worked, had Sprint properly classified them as employees, either under M.G.L. c. 149, § 148B or common law. This claim is brought pursuant to M.G.L. c. 151, § 20.

COUNT VI
OVERTIME – M.G.L. c. 151, § 1A
(As to Sprint)

As described above, Plaintiffs and the class members have not received one and one half times their regular hourly rates required by M.G.L. c. 151, § 1A for all hours worked in excess of 40 during a workweek, had Sprint properly classified them as employees, either under M.G.L. c. 149, § 148B or common law. This claim is brought pursuant to M.G.L. c. 151, § 1B.

COUNT VII
UNPAID WAGES – M.G.L. c. 149, §§ 148 and 150
(As to Boss and Ms. Bekbossynova)

As described above, as the result of Boss's uniform compensation practices, Plaintiffs and the class members have not received all wages to which they are entitled, have not been properly compensated for travel time, have had improper deductions taken from their pay, have

been required to bear expenses relating to their employment that Boss should have paid, and have been denied other benefits of employment to which they are entitled, including paid sick time and paid vacation time. This conduct is in violation of the Massachusetts Wage Act, M.G.L. c. 149, §§ 148 and 150. This claim is brought against Boss on behalf of Plaintiffs and other similarly situated individuals pursuant to M.G.L. c. 149, § 150.

COUNT VIII
MINIMUM WAGE – M.G.L. c. 151, § 1
(As to Boss and Ms. Bekbossynova)

As described above, Plaintiffs and the class members have not received the required minimum wages required by M.G.L. c. 151, § 1 for all hours worked. This claim is brought pursuant to M.G.L. c. 151, § 20.

COUNT IX
OVERTIME – M.G.L. c. 151, § 1A
(As to Boss and Ms. Bekbossynova)

As described above, Plaintiffs and the class members have not received one and one half times their regular hourly rates required by M.G.L. c. 151, § 1A for all hours worked in excess of 40 during a workweek. This claim is brought pursuant to M.G.L. c. 151, § 1B.

JURY DEMAND

Plaintiffs request a trial by jury on all claims.

WHEREFORE, Plaintiffs seek judgment against Assurance, Sprint, Boss, and Ms. Bekbossynova as follows:

1. Certification of Plaintiffs' claims against Assurance as a class action, or recognition that those claims are properly brought against Assurance and Sprint on behalf of all similarly situated employees, pursuant to Mass. R. Civ. P. 23, M.G.L. c. 149, § 150, and/or M.G.L. c. 151, §§ 1B, 20.

2. Certification of Plaintiffs' claims against Assurance as a class action, or recognition that those claims are properly brought against Assurance and Sprint on behalf of all similarly situated employees, pursuant to Mass. R. Civ. P. 23, M.G.L. c. 149, § 150, and/or M.G.L. c. 151, §§ 1B, 20.

3. Certification of Plaintiffs' claims against Boss and Ms. Bekbossynova as a class action, or recognition that those claims are properly brought against Boss and Ms. Bekbossynova on behalf of all similarly situated employees, pursuant to Mass. R. Civ. P. 23, M.G.L. c. 149, § 150, and/or M.G.L. c. 151, §§ 1B, 20.

4. All damages to which Plaintiffs and the respective classes are entitled to from Assurance under Massachusetts law.

5. All damages to which Plaintiffs and the respective classes are entitled to from Sprint under Massachusetts law.

6. All damages to which Plaintiffs and the respective classes are entitled to from Boss and Ms. Bekbossynova under Massachusetts law.

7. Statutory trebling of damages caused by Assurance, pursuant to Massachusetts law, as well as attorneys' fees, costs, and interest as allowed by law.

8. Statutory trebling of damages caused by Sprint, pursuant to Massachusetts law, as well as attorneys' fees, costs, and interest as allowed by law.

9. Statutory trebling of damages caused by Boss and Ms. Bekbossynova , pursuant to Massachusetts law, as well as attorneys' fees, costs, and interest as allowed by law.

10. Such other and further relief as the Court may deem proper and just.

Respectfully submitted,

ERICA DIPLACIDO;
TYLER KEELEY; RYAN LABRIE,
on behalf of themselves and all
others similarly situated,

By their attorney,

Brook S. Lane, BBO# 678742
FAIR WORK, P.C.
192 South Street, Suite 450
Boston, MA 02111
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Dated: July 2, 2019

15.2

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. **SUPERIOR COURT DEPARTMENT**

ERICA DIPLACIDO; TYLER KEELEY; and RYAN LABRIE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

SPRINT SOLUTIONS, INC.; BOSS ENTERPRISE, INC.; and KURALAY BEKBOSSYNOVA, individually

Defendants.

Case No. 2084-cv-01871

E-Filed 02/11/2021 NJ

AFFIDAVIT OF KURALAY BEKBOSSYNOVA

I, Kuralay Bekbossynova, under oath, state that the following statements are true:

1. I am the President and Treasurer of Boss Enterprise, Inc. ("Boss Enterprises").

2. Upon hire at Boss Enterprises, all employees are provided standard onboarding packet which includes an At-Will Employment Agreement ("Employment Agreement") and a Mutual Agreement to Arbitrate Employment-Related Disputes ("Arbitration Policy").

3. As a condition of their employment, Erica DiPlacido, Tyler Keeley and Ryan Labrie were provided the standard onboarding packet and were required to complete and execute an Employment Agreement and Arbitration Policy.

4. A true and accurate copy of Erica DiPlacido's executed Employment Agreement is attached as Exhibit A. The executed copy of Ms. DiPlacido's Arbitration Policy has not been located at this time.

5. A true and accurate copy of Tyler Keeley's executed Employment Agreement and Arbitration Policy is attached as Exhibit B.

6. A true and accurate copy of Ryan Labrie's executed Employment Agreement and Arbitration Policy is attached as Exhibit C.

Signed under the pains and penalties of perjury this 20 day of January 2021.

Kuralay Bekbossynova

EXHIBIT A

WILL EMPLOYMENT AGREEMENT between:

COMPANY/EMPLOYER:	EMPLOYEE NAME:
Boss Enterprise Inc.	Enza DiPlacido

THIS AGREEMENT sets forth the terms of employment between the above named Company/Employer and the Salesperson/Employee.

JOB DESCRIPTION: The Company markets and sells various products and services (collectively "Products and Services") for clients through outside salespersons. Employee will be engaged in selling Products and/or Services on behalf of Company's clients as an outside salesperson.

COMPENSATION: Employee will be paid on a commission basis, OR _____ per hour ("Hourly Rate"), whichever is higher, including overtime (1 ½ times the regular rate). If Employee works overtime. For the purpose of determining which is higher, bonuses, if any, will be added to Employee's commissions. If Employee's commissions and bonuses in a workweek/pay period do not exceed Employee's total hourly pay, then Employee shall not be paid any bonus. In no event shall Employee be entitled to receive the Hourly Rate of pay plus commission and bonus. In any workweek/pay period, where Employee's commissions do not exceed the Hourly Rate of pay, the employee shall be advanced commissions in the amount necessary to provide Employee with a guaranteed draw at the Hourly Rate.

Commission rates will vary depending upon Products and Services sold. Employee will be apprised of commission rates and policies prior to engaging in the sale of Products and/or Services. Employee agrees and understands that Company shall have the right to modify the commission rate to a higher or lower rate at any time without prior notice to Employee but in no event shall the modification be retroactive. Further, Company agrees that any modification of the commission rate shall be set forth in writing to Employee. The commission rate(s) are set forth in the Commission Schedule, which is provided herewith and incorporated herein as **Exhibit A** to this Agreement.

RECONCILIATION OF GUARANTEED DRAW ADVANCE, IF ANY, AGAINST FUTURE COMMISSIONS: When in any workweek/pay period Employee's commission and bonus do not exceed the Hourly Rate of pay, the amount of commissions advanced to Employee so as to provide Employee with a guaranteed draw at Employee's Hourly Rate may be deducted from any commissions earned in a subsequent workweek/pay period which are in excess of the total wages paid at the hourly wage rate to be paid for the hours worked in that pay period.

PAYDAY AND PAYCHECKS: Employee will receive his/her paycheck every Week. The pay period/work week is Mon through Fri. Employee will be paid, in arrears, 2 week(s) following the end of each workweek. Employee is responsible for keeping complete and accurate time records on timesheets and submitting the timesheets to Company, and the failure to do so may result in disciplinary action, up to and including termination of employment.

ADHERENCE TO COMPANY RULES AND POLICIES: Employee agrees to abide by all work rules and policies that are established by Company at any time and which pertain to the Employee's conduct at the workplace and the manner in which Employee sells Company's Products and/or Services. The Company retains the right to revise and modify work rules and policies at its sole discretion.

NO AUTHORITY TO BIND COMPANY: Employee has no authority, either express or implied, to obligate the Company or its clients, service providers, and/or suppliers in any manner whatsoever, either verbally or in writing.

AT-WILL EMPLOYMENT/TERMINATION: The parties acknowledge and agree that Employee is an at-will employee of the Company. Nothing in this Agreement gives Employee the right to be employed by the Company for any specified duration of time regardless of the length of Employee's employment. Company or Employee may terminate the employment relationship at any time, for any reason or no reason, and without advance notice. Progressive discipline is left to the sole discretion of Company and nothing in this Agreement requires Company to issue a warning or suspension prior to discharging an employee.

COMMISSIONS PAID UPON TERMINATION: Upon termination of employment, Employee shall be entitled to receive payment of all commissions "earned," up through and including the Employee's date of termination. The event or events which result in a commission earned will depend on the product or service sold and is defined in the Commission Schedule that Employee is provided prior to marketing and/or selling the product or service.

vision, group or franchise or a larger organization) which engages in acquiring customers through door to door home and/or door to door business solicitations, and/or solicitation in or outside retail stores, and/or solicitation through events based marketing in or outside retail stores within a thirty-five (35) mile radius of the county in which Company's principal place of business is located during the time period this Agreement was in effect.

MUTUAL ARBITRATION OF ALL CLAIMS: Any claims that an Employee may have against the Company (except for workers' compensation or unemployment insurance benefits), and any claims the Company may have against Employee shall be resolved by an arbitrator and not in a court proceeding. The arbitration agreement is explained in detail in the **MUTUAL ARBITRATION OF ALL CLAIMS AGREEMENT**, which is provided herewith and incorporated herein by reference.

NO MODIFICATION OF AT-WILL EMPLOYMENT UNLESS IN WRITING: The at-will relationship between Company and Employee may only be changed or modified by an agreement in writing signed by the President of Company.

SEVERABILITY: Should any part of this Agreement be declared invalid, void, or unenforceable, all remaining parts shall remain in full force and effect and shall in no way be invalidated or affected.

BY ACCEPTING EMPLOYMENT WITH COMPANY, OR CONTINUING TO REMAIN EMPLOYED BY COMPANY, YOU ARE ACKNOWLEDGING THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE TERMS OF THIS AT-WILL EMPLOYMENT AGREEMENT.

Signed By	Signed Date
Erica DiPlacido	1/23/18

EXHIBIT B

Mutual Agreement to Arbitrate Employment-Related Disputes

This Mutual Agreement to Arbitrate Employment-Related Disputes (called the "Arbitration Agreement") is an agreement between you ("Employee") and Boss Enterrpise Inc **("Employer" or "Company"), which sets out your rights and the rights of Company in connection with the resolution of employment-related dispute. You have the right to ask independent advisors of your choice, including lawyers, to explain this Arbitration Agreement to you if that is your choice, but you are not required to do so.**

Employment with Employer is a voluntary relationship for no definite period of time, and noting in this Arbitration Agreement or any other Employer document constitutes an express or implied contract of employment for a definite period of time. This Arbitration Agreement does not in any way alter the "employment at will" relationship between Employer and Employee.

1. Mandatory Arbitration.

Employer and Employee agree that any claim, complaint, or dispute that arises out of or relates in any way to the Parties' employment relationship including but not limited to Employee's application or candidacy for employment, employment, or termination of employment, whether based in contract, tort, federal, state, or municipal statute, fraud, misrepresentation, or any other legal theory, shall be submitted to binding arbitration to be held in the county and state of the nearest office of the American Arbitration Association ("AAA") where Employee worked for Employer, and administered by the AAA in accordance with its Employment Arbitration Rules and Mediation Procedures (the "Rules") applicable at the time the arbitration is commenced. A copy of the current version of the Rules is attached hereto as **Exhibit A**. The Rules may be amended from time to time and are also available online at **https://www.adr.org/sites/default/files/Employment%20Rules.pdf**. You can also call the AAA at **1-800-778-7879** if you have questions about the arbitration process. If the Rules are inconsistent with the terms of this Agreement, the terms of this Agreement shall govern. This Arbitration Agreement is made pursuant to a transaction involving interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. §1, et seq. ("FAA"). In the event of any inconsistency between the FAA and the Rules, the FAA will prevail.

The Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the enforceability or formation of this Agreement and the arbitrability of dispute between the parties. The Arbitrator's decision shall be in writing and final and binding upon the Employer and Employee. Nothing in this provision shall preclude Parties from seeking provisional remedies in aid of arbitration, including preliminary injunctive relief, from a court of competent jurisdiction. Although a court may grant provisional injunctive relief, the arbitrator shall at all times retain the power to grant permanent injunctive relief, or any other final remedy.

A party may be awarded any damages available in a court of law on the Claims presented and deceived by the arbitrator to which an individual in his or her individual capacity would be entitled; no remedies otherwise available to an individual in a court of law are waived, or given up, under this Arbitration Agreement.

2. Covered Claims.

This Agreement to arbitrate covers all grievances, disputes, claims, or causes of action (collectively, **"claims"**) that otherwise could be brought in a federal, state, or local court or agency under applicable federal, state, or local laws, arising out of or relating to Employee's application or candidacy for employment, employment with the Employer and the termination thereof, including claims Employee may have against the Employer or against its officers, directors, supervisors, managers, employees, or agents in their capacity as such or otherwise, or that the Employer may have against Employee. Employer and Employee consent to the joinder and participation in the arbitration proceeding of parties, who are not parties or signatories to this Arbitration Agreement, including but not limited to Company's suppliers, services providers, clients, or any other essential party relevant to a full and complete settlement of any dispute arising out of or relating to Employee's application or candidacy for employment, employment, or termination of employment with the Employer and which may have occurred prior to or after entering into this arbitration agreement and arbitrated under this Arbitration Agreement.

The claims covered by this Agreement include, but are not limited to, claims for breach of any contract or covenant (express or implied), tort claims, claims for wages or other compensation due, claims for wrongful termination (constructive or actual), claims for discrimination or harassment (including, but not limited to, harassment or discrimination based on race, age, color, sex, gender, national origin, alienage or citizenship status, creed, religion, marital status, partnership status, military status, predisposing genetic characteristics, medical condition, psychological condition, mental condition, criminal accusations and convictions, disability, sexual orientation, or any other trait or characteristic protected by federal, state, or local law), claims for violation of any federal, state, local, or other governmental law, statute, regulation, or ordinance, including, but not limited to, all claims arising under Title VII of the Civil Rights Act, as amended, the Americans with Disabilities Act, as amended, the Family and Medical Leave Act, as amended, the Fair Labor Standards Act, as amended, the Equal Pay Act, as amended, the Employee Retirement Income Security Act, as amended, the Civil Rights Act of 1991, as amended, Section 1981 of U.S.C. Title 42, the Sarbanes-Oxley Act of 2002, as amended, the Worker Adjustment and Retraining Notification Act, as amended, the Age Discrimination in Employment Act, as amended, the Uniform Services Employment and Reemployment Rights Act, as amended, the Genetic Information Nondiscrimination Act, all of their respective implementing regulations and any other federal, state, local, or foreign law (statutory, regulatory, or otherwise).

3. Claims Not Covered. Claims not covered by this Agreement are claims for workers' compensation, unemployment compensation benefits, or any other claims that, as a matter of law, the Parties cannot agree to arbitrate. Nothing in this Agreement shall be interpreted to mean that Employee is precluded from filing complaints with state administrative agencies, and/or the federal Equal Employment Opportunity Commission and National Labor Relations Board.

4. Waiver of Class Action and Representative Action Claims. Except as otherwise required under applicable law, Employee and Employer expressly intend and agree that: (a) class action and representative action procedures shall not be asserted, nor will they apply, in any arbitration pursuant to this Agreement; (b) each will not assert class action or representative action claims against the other in arbitration or otherwise; and (c) to the extent not otherwise permitted in this Arbitration Agreement, Employee and Employer shall only submit their own, individual claims in arbitration and will not seek to represent the interests of any other person. Further, Employee and Employer expressly intend and agree that any claims by the Employee will not be joined, consolidated, or heard together with claims of any other employee. Notwithstanding anything to the contrary in the Rules and the general grant of authority to the arbitrator in Section 1 of the power to determine issues of arbitrability, the arbitrator shall have no jurisdiction or authority to compel any class or collective claim, to consolidate different arbitration proceedings, or to join any other party to an arbitration between Employer and Employee.

5. Waiver of Trial by Jury. The Parties understand and fully agree that by entering into this Agreement to arbitrate; they are giving up their constitutional right to have a trial by jury, and are giving up their normal rights of appeal following the rendering of the arbitrator's award except as applicable law provides for judicial review of arbitration proceedings.

6. Claims Procedure. Arbitration shall be initiated upon the express written notice of either party. The aggrieved party must give written notice of any claim to the other party. Written notice of an Employee's claim shall be e-mailed to the Employer's President at bekboss.17@gmail.com
("**Notice Address**"). Written notice of the Employer's claim will be mailed to the last known address of Employee. The written notice shall identify and describe the nature of all claims asserted and the facts upon which such claims are based. All Claims brought in arbitration are subject to the same statutes of limitation as they would be in court.

7. Arbitrator Selection. The Arbitrator shall be selected as provided in the Rules. Employee has the right to have a claim or controversy decided by a neutral arbitrator and be represented by an attorney of Employee's choice, present witnesses for Employee's behalf and introduce evidence for Employee's behalf.

8. Discovery. Each party shall be entitled to discovery in accordance with the Rules. The Arbitrator shall have the authority to set deadlines for completion of discovery. The Arbitrator shall decide all discovery disputes.

9. Substantive Law. The Arbitrator shall apply the substantive state or federal law (and the law of remedies, if applicable) as applicable to the claim(s) asserted. Claims arising under federal law shall be determined in accordance with federal law.

10. Motions. The Arbitrator shall have jurisdiction to hear and rule on prehearing disputes and is authorized to hold prehearing conferences by telephone or in person as the Arbitrator deems necessary. The Arbitrator shall have the authority to set deadlines for filing motions for summary judgment, and to set briefing schedules for any motions. The Arbitrator may allow the filing of a dispositive motion if the Arbitrator determines that the moving party has shown substantial cause that the motion is likely to succeed and dispose of or narrow the issues in the case. The Arbitrator shall have the authority to adjudicate any cause of action, or the entire claim, pursuant to a motion for summary adjudication and in deciding the motion, shall apply the substantive law applicable to the cause of action.

11. Compelling Arbitration/Enforcing Award. Either party may ask a court to stay any court proceeding, to compel arbitration under this Agreement, and to confirm, vacate, or enforce an arbitration award. Judgment on the award rendered by the arbitrator shall be in writing and may be entered in any court having jurisdiction thereof.

12. Arbitration Fees and Costs. Employer shall be responsible for the arbitrator's fees and expenses. Each party shall pay its own costs and attorneys' fees, if any. However, if any party prevails on a statutory claim that affords the prevailing party attorneys' fees and costs, or if there is a written agreement providing for attorneys' fees and costs, the Arbitrator may award reasonable attorneys' fees in accordance with the applicable statute or written agreement. The Arbitrator shall resolve any dispute as to the reasonableness of any fee or cost that may be awarded under this paragraph.

13. Term of Agreement. This Agreement to arbitrate shall survive the termination of Employee's employment. It can only be revoked or modified in writing signed by both Parties that specifically states an intent to revoke or modify this Agreement and is signed by Employer's President.

14. Severability. If any provision of this Agreement to arbitrate is adjudged to be void or otherwise unenforceable, in whole or in part, the void or unenforceable provision shall be severed and such adjudication shall not affect the validity of the remainder of this Agreement to arbitrate.

15. No Retaliation. Employer will not tolerate retaliation against you in connection with you asserting a right under this Arbitration Agreement. If you believe that anyone at Employer has retaliated against your or in any manner misled or coerced you in connection with you asserting a right under or opting out of this Arbitration Agreement, you should report such events to the President of Company immediately.

16. Voluntary Agreement. By executing this Agreement the Parties represent that they have been given the opportunity to fully review, and comprehend the terms of this Agreement. The Parties understand the terms of this Agreement and freely and voluntarily sign this Agreement. Further by accepting employment with Employer, or continuing to remain employed by Employer, you are acknowledging that you have read, understood, and agree to be bound by the terms of this mutual Arbitration Agreement. You further acknowledge receipt of the Rules attached as Exhibit A.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

By: Tyler Keeley	By:
Employee Name: Tyler Keeley	President Jason Ward
Date: 07/26/2018 04:59:00 AM PST	Date: 6.06.2018

-WILL EMPLOYMENT AGREEMENT between:

COMPANY/EMPLOYER	EMPLOYEE NAME:
Boss Enterprise Inc	Tyler Keeley

THIS AGREEMENT sets forth the terms of employment between the above named Company/Employer and the Salesperson/Employee.

JOB DESCRIPTION: The Company markets and sells various products and services (collectively "Products and Services") for clients through outside salespersons. Employee will be engaged in selling Products and/or Services on behalf of Company's clients as an outside salesperson.

COMPENSATION: Employee will be paid on a commission basis, OR _____ per hour ("Hourly Rate"), whichever is higher, including overtime (1 ½ times the regular rate). If Employee works overtime. For the purpose of determining which is higher, bonuses, if any, will be added to Employee's commissions. If Employee's commissions and bonuses in a workweek/pay period do not exceed Employee's total hourly pay, then Employee shall not be paid any bonus. In no event shall Employee be entitled to receive the Hourly Rate of pay plus commission and bonus. In any workweek/pay period, where Employee's commissions do not exceed the Hourly Rate of pay, the employee shall be advanced commissions in the amount necessary to provide Employee with a guaranteed draw at the Hourly Rate.

Commission rates will vary depending upon Products and Services sold. Employee will be apprised of commission rates and policies prior to engaging in the sale of Products and/or Services. Employee agrees and understands that Company shall have the right to modify the commission rate to a higher or lower rate at any time without prior notice to Employee but in no event shall the modification be retroactive. Further, Company agrees that any modification of the commission rate shall be set forth in writing to Employee. The commission rate(s) are set forth in the Commission Schedule, which is provided herewith and incorporated herein as Exhibit A to this Agreement.

RECONCILIATION OF GUARANTEED DRAW ADVANCE, IF ANY, AGAINST FUTURE COMMISSIONS: When in any workweek/pay period Employee's commission and bonus do not exceed the Hourly Rate of pay, the amount of commissions advanced to Employee so as to provide Employee with a guaranteed draw at Employee's Hourly Rate may be deducted from any commissions earned in a subsequent workweek/pay period which are in excess of the total wages paid at the hourly wage rate to be paid for the hours worked in that pay period.

PAYDAY AND PAYCHECKS: Employee will receive his/her paycheck every Week. The pay period/work week is Mon through Fri. Employee will be paid, in arrears, 2 week(s) following the end of each workweek. Employee is responsible for keeping complete and accurate time records on timesheets and submitting the timesheets to Company, and the failure to do so may result in disciplinary action, up to and including termination of employment.

ADHERENCE TO COMPANY RULES AND POLICIES: Employee agrees to abide by all work rules and policies that are established by Company at any time and which pertain to the Employee's conduct at the workplace and the manner in which Employee sells Company's Products and/or Services. The Company retains the right to revise and modify work rules and policies at its sole discretion.

NO AUTHORITY TO BIND COMPANY: Employee has no authority, either express or implied, to obligate the Company or its clients, service providers, and/or suppliers in any manner whatsoever, either verbally or in writing.

AT-WILL EMPLOYMENT/TERMINATION: The parties acknowledge and agree that Employee is an at-will employee of the Company. Nothing in this Agreement gives Employee the right to be employed by the Company for any specified duration of time regardless of the length of Employee's employment. Company or Employee may terminate the employment relationship at any time, for any reason or no reason, and without advance notice. Progressive discipline is left to the sole discretion of Company and nothing in this Agreement requires Company to issue a warning or suspension prior to discharging an employee.

COMMISSIONS PAID UPON TERMINATION: Upon termination of employment, Employee shall be entitled to receive payment of all commissions "earned," up through and including the Employee's date of termination. The event or events which result in a commission earned will depend on the product or service sold and is defined in the Commission Schedule that Employee is provided prior to marketing and/or selling the product or service.

division, group or franchise or a larger organization) which engages in acquiring customers through door to door home and/or door to door business solicitations, and/or solicitation in or outside retail stores, and/or solicitation through events based marketing in or outside retail stores within a thirty-five (35) mile radius of the county in which Company's principal place of business is located during the time period this Agreement was in effect.

MUTUAL ARBITRATION OF ALL CLAIMS: Any claims that an Employee may have against the Company (except for workers' compensation or unemployment insurance benefits), and any claims the Company may have against Employee shall be resolved by an arbitrator and not in a court proceeding. The arbitration agreement is explained in detail in the **MUTUAL ARBITRATION OF ALL CLAIMS AGREEMENT**, which is provided herewith and incorporated herein by reference.

NO MODIFICATION OF AT-WILL EMPLOYMENT UNLESS IN WRITING: The at-will relationship between Company and Employee may only be changed or modified by an agreement in writing signed by the President of Company.

SEVERABILITY: Should any part of this Agreement be declared invalid, void, or unenforceable, all remaining parts shall remain in full force and effect and shall in no way be invalidated or affected.

BY ACCEPTING EMPLOYMENT WITH COMPANY, OR CONTINUING TO REMAIN EMPLOYED BY COMPANY, YOU ARE ACKNOWLEDGING THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE TERMS OF THIS AT-WILL EMPLOYMENT AGREEMENT.

Signed By	Signed Date
[signature]	05/04/18

EXHIBIT C

Mutual Agreement to Arbitrate Employment-Related Disputes

This Mutual Agreement to Arbitrate Employment-Related Disputes (called the "Arbitration Agreement") is an agreement between you ("Employee") and Boss Enterrpise Inc **("Employer" or "Company"), which sets out your rights and the rights of Company in connection with the resolution of employment-related dispute. You have the right to ask independent advisors of your choice, including lawyers, to explain this Arbitration Agreement to you if that is your choice, but you are not required to do so.**

Employment with Employer is a voluntary relationship for no definite period of time, and noting in this Arbitration Agreement or any other Employer document constitutes an express or implied contract of employment for a definite period of time. This Arbitration Agreement does not in any way alter the "employment at will" relationship between Employer and Employee.

1. Mandatory Arbitration.

Employer and Employee agree that any claim, complaint, or dispute that arises out of or relates in any way to the Parties' employment relationship including but not limited to Employee's application or candidacy for employment, employment, or termination of employment, whether based in contract, tort, federal, state, or municipal statute, fraud, misrepresentation, or any other legal theory, shall be submitted to binding arbitration to be held in the county and state of the nearest office of the American Arbitration Association ("AAA") where Employee worked for Employer, and administered by the AAA in accordance with its Employment Arbitration Rules and Mediation Procedures (the "Rules") applicable at the time the arbitration is commenced. A copy of the current version of the Rules is attached hereto as **Exhibit A**. The Rules may be amended from time to time and are also available online at **https://www.adr.org/sites/default/files/Employment%20Rules.pdf**. You can also call the AAA at **1-800-778-7879** if you have questions about the arbitration process. If the Rules are inconsistent with the terms of this Agreement, the terms of this Agreement shall govern. This Arbitration Agreement is made pursuant to a transaction involving interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. §1, et seq. ("FAA"). In the event of any inconsistency between the FAA and the Rules, the FAA will prevail.

The Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the enforceability or formation of this Agreement and the arbitrability of dispute between the parties. The Arbitrator's decision shall be in writing and final and binding upon the Employer and Employee. Nothing in this provision shall preclude Parties from seeking provisional remedies in aid of arbitration, including preliminary injunctive relief, from a court of competent jurisdiction. Although a court may grant provisional injunctive relief, the arbitrator shall at all times retain the power to grant permanent injunctive relief, or any other final remedy.

A party may be awarded any damages available in a court of law on the Claims presented and deceived by the arbitrator to which an individual in his or her individual capacity would be entitled; no remedies otherwise available to an individual in a court of law are waived, or given up, under this Arbitration Agreement.

2. Covered Claims.

This Agreement to arbitrate covers all grievances, disputes, claims, or causes of action (collectively, **"claims"**) that otherwise could be brought in a federal, state, or local court or agency under applicable federal, state, or local laws, arising out of or relating to Employee's application or candidacy for employment, employment with the Employer and the termination thereof, including claims Employee may have against the Employer or against its officers, directors, supervisors, managers, employees, or agents in their capacity as such or otherwise, or that the Employer may have against Employee. Employer and Employee consent to the joinder and participation in the arbitration proceeding of parties, who are not parties or signatories to this Arbitration Agreement, including but not limited to Company's suppliers, services providers, clients, or any other essential party relevant to a full and complete settlement of any dispute arising out of or relating to Employee's application or candidacy for employment, employment, or termination of employment with the Employer and which may have occurred prior to or after entering into this arbitration agreement and arbitrated under this Arbitration Agreement.

The claims covered by this Agreement include, but are not limited to, claims for breach of any contract or covenant (express or implied), tort claims, claims for wages or other compensation due, claims for wrongful termination (constructive or actual), claims for discrimination or harassment (including, but not limited to, harassment or discrimination based on race, age, color, sex, gender, national origin, alienage or citizenship status, creed, religion, marital status, partnership status, military status, predisposing genetic characteristics, medical condition, psychological condition, mental condition, criminal accusations and convictions, disability, sexual orientation, or any other trait or characteristic protected by federal, state, or local law), claims for violation of any federal, state, local, or other governmental law, statute, regulation, or ordinance, including, but not limited to, all claims arising under Title VII of the Civil Rights Act, as amended, the Americans with Disabilities Act, as amended, the Family and Medical Leave Act, as amended, the Fair Labor Standards Act, as amended, the Equal Pay Act, as amended, the Employee Retirement Income Security Act, as amended, the Civil Rights Act of 1991, as amended, Section 1981 of U.S.C. Title 42, the Sarbanes-Oxley Act of 2002, as amended, the Worker Adjustment and Retraining Notification Act, as amended, the Age Discrimination in Employment Act, as amended, the Uniform Services Employment and Reemployment Rights Act, as amended, the Genetic Information Nondiscrimination Act, all of their respective implementing regulations and any other federal, state, local, or foreign law (statutory, regulatory, or otherwise).

3. Claims Not Covered. Claims not covered by this Agreement are claims for workers' compensation, unemployment compensation benefits, or any other claims that, as a matter of law, the Parties cannot agree to arbitrate. Nothing in this Agreement shall be interpreted to mean that Employee is precluded from filing complaints with state administrative agencies, and/or the federal Equal Employment Opportunity Commission and National Labor Relations Board.

4. Waiver of Class Action and Representative Action Claims. Except as otherwise required under applicable law, Employee and Employer expressly intend and agree that: (a) class action and representative action procedures shall not be asserted, nor will they apply, in any arbitration pursuant to this Agreement; (b) each will not assert class action or representative action claims against the other in arbitration or otherwise; and (c) to the extent not otherwise permitted in this Arbitration Agreement, Employee and Employer shall only submit their own, individual claims in arbitration and will not seek to represent the interests of any other person. Further, Employee and Employer expressly intend and agree that any claims by the Employee will not be joined, consolidated, or heard together with claims of any other employee. Notwithstanding anything to the contrary in the Rules and the general grant of authority to the arbitrator in Section 1 of the power to determine issues of arbitrability, the arbitrator shall have no jurisdiction or authority to compel any class or collective claim, to consolidate different arbitration proceedings, or to join any other party to an arbitration between Employer and Employee.

5. Waiver of Trial by Jury. The Parties understand and fully agree that by entering into this Agreement to arbitrate; they are giving up their constitutional right to have a trial by jury, and are giving up their normal rights of appeal following the rendering of the arbitrator's award except as applicable law provides for judicial review of arbitration proceedings.

6. Claims Procedure. Arbitration shall be initiated upon the express written notice of either party. The aggrieved party must give written notice of any claim to the other party. Written notice of an Employee's claim shall be e-mailed to the Employer's President at bekboss.17@gmail.com
("**Notice Address**"). Written notice of the Employer's claim will be mailed to the last known address of Employee. The written notice shall identify and describe the nature of all claims asserted and the facts upon which such claims are based. All Claims brought in arbitration are subject to the same statutes of limitation as they would be in court.

7. Arbitrator Selection. The Arbitrator shall be selected as provided in the Rules. Employee has the right to have a claim or controversy decided by a neutral arbitrator and be represented by an attorney of Employee's choice, present witnesses for Employee's behalf and introduce evidence for Employee's behalf.

8. Discovery. Each party shall be entitled to discovery in accordance with the Rules. The Arbitrator shall have the authority to set deadlines for completion of discovery. The Arbitrator shall decide all discovery disputes.

9. Substantive Law. The Arbitrator shall apply the substantive state or federal law (and the law of remedies, if applicable) as applicable to the claim(s) asserted. Claims arising under federal law shall be determined in accordance with federal law.

10. Motions. The Arbitrator shall have jurisdiction to hear and rule on prehearing disputes and is authorized to hold prehearing conferences by telephone or in person as the Arbitrator deems necessary. The Arbitrator shall have the authority to set deadlines for filing motions for summary judgment, and to set briefing schedules for any motions. The Arbitrator may allow the filing of a dispositive motion if the Arbitrator determines that the moving party has shown substantial cause that the motion is likely to succeed and dispose of or narrow the issues in the case. The Arbitrator shall have the authority to adjudicate any cause of action, or the entire claim, pursuant to a motion for summary adjudication and in deciding the motion, shall apply the substantive law applicable to the cause of action.

11. Compelling Arbitration/Enforcing Award. Either party may ask a court to stay any court proceeding, to compel arbitration under this Agreement, and to confirm, vacate, or enforce an arbitration award. Judgment on the award rendered by the arbitrator shall be in writing and may be entered in any court having jurisdiction thereof.

12. Arbitration Fees and Costs. Employer shall be responsible for the arbitrator's fees and expenses. Each party shall pay its own costs and attorneys' fees, if any. However, if any party prevails on a statutory claim that affords the prevailing party attorneys' fees and costs, or if there is a written agreement providing for attorneys' fees and costs, the Arbitrator may award reasonable attorneys' fees in accordance with the applicable statute or written agreement. The Arbitrator shall resolve any dispute as to the reasonableness of any fee or cost that may be awarded under this paragraph.

13. Term of Agreement. This Agreement to arbitrate shall survive the termination of Employee's employment. It can only be revoked or modified in writing signed by both Parties that specifically states an intent to revoke or modify this Agreement and is signed by Employer's President.

14. Severability. If any provision of this Agreement to arbitrate is adjudged to be void or otherwise unenforceable, in whole or in part, the void or unenforceable provision shall be severed and such adjudication shall not affect the validity of the remainder of this Agreement to arbitrate.

15. No Retaliation. Employer will not tolerate retaliation against you in connection with you asserting a right under this Arbitration Agreement. If you believe that anyone at Employer has retaliated against your or in any manner misled or coerced you in connection with you asserting a right under or opting out of this Arbitration Agreement, you should report such events to the President of Company immediately.

16. Voluntary Agreement. By executing this Agreement the Parties represent that they have been given the opportunity to fully review, and comprehend the terms of this Agreement. The Parties understand the terms of this Agreement and freely and voluntarily sign this Agreement. Further by accepting employment with Employer, or continuing to remain employed by Employer, you are acknowledging that you have read, understood, and agree to be bound by the terms of this mutual Arbitration Agreement. You further acknowledge receipt of the Rules attached as Exhibit A.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

By: Ryan LaBrie	By:
Employee Name: Ryan Labrie	President Jason Ward
Date: 06/15/2018 03:42:07 AM PST	Date: 6.06.2018

-WILL EMPLOYMENT AGREEMENT between:

COMPANY/EMPLOYER: Boss Enterprise Inc	EMPLOYEE NAME: Ryan Labrie

THIS AGREEMENT sets forth the terms of employment between the above named Company/Employer and the Salesperson/Employee.

JOB DESCRIPTION: The Company markets and sells various products and services (collectively "Products and Services") for clients through outside salespersons. Employee will be engaged in selling Products and/or Services on behalf of Company's clients as an outside salesperson.

COMPENSATION: Employee will be paid on a commission basis, OR _____ per hour ("Hourly Rate"), whichever is higher, including overtime (1 ½ times the regular rate), if Employee works overtime. For the purpose of determining which is higher, bonuses, if any, will be added to Employee's commissions. If Employee's commissions and bonuses in a workweek/pay period do not exceed Employee's total hourly pay, then Employee shall not be paid any bonus. In no event shall Employee be entitled to receive the Hourly Rate of pay plus commission and bonus. In any workweek/pay period, where Employee's commissions do not exceed the Hourly Rate of pay, the employee shall be advanced commissions in the amount necessary to provide Employee with a guaranteed draw at the Hourly Rate.

Commission rates will vary depending upon Products and Services sold. Employee will be apprised of commission rates and policies prior to engaging in the sale of Products and/or Services. Employee agrees and understands that Company shall have the right to modify the commission rate to a higher or lower rate at any time without prior notice to Employee but in no event shall the modification be retroactive. Further, Company agrees that any modification of the commission rate shall be set forth in writing to Employee. The commission rate(s) are set forth in the Commission Schedule, which is provided herewith and incorporated herein as Exhibit A to this Agreement.

RECONCILIATION OF GUARANTEED DRAW ADVANCE, IF ANY, AGAINST FUTURE COMMISSIONS: When in any workweek/pay period Employee's commission and bonus do not exceed the Hourly Rate of pay, the amount of commissions advanced to Employee so as to provide Employee with a guaranteed draw at Employee's Hourly Rate may be deducted from any commissions earned in a subsequent workweek/pay period which are in excess of the total wages paid at the hourly wage rate to be paid for the hours worked in that pay period.

PAYDAY AND PAYCHECKS: Employee will receive his/her paycheck every Week. The pay period/work week is Mon through Fri. Employee will be paid, in arrears, 2 week(s) following the end of each workweek. Employee is responsible for keeping complete and accurate time records on timesheets and submitting the timesheets to Company, and the failure to do so may result in disciplinary action, up to and including termination of employment.

ADHERENCE TO COMPANY RULES AND POLICIES: Employee agrees to abide by all work rules and policies that are established by Company at any time and which pertain to the Employee's conduct at the workplace and the manner in which Employee sells Company's Products and/or Services. The Company retains the right to revise and modify work rules and policies at its sole discretion.

NO AUTHORITY TO BIND COMPANY: Employee has no authority, either express or implied, to obligate the Company or its clients, service providers, and/or suppliers in any manner whatsoever, either verbally or in writing.

AT-WILL EMPLOYMENT/TERMINATION: The parties acknowledge and agree that Employee is an at-will employee of the Company. Nothing in this Agreement gives Employee the right to be employed by the Company for any specified duration of time regardless of the length of Employee's employment. Company or Employee may terminate the employment relationship at any time, for any reason or no reason, and without advance notice. Progressive discipline is left to the sole discretion of Company and nothing in this Agreement requires Company to issue a warning or suspension prior to discharging an employee.

COMMISSIONS PAID UPON TERMINATION: Upon termination of employment, Employee shall be entitled to receive payment of all commissions "earned," up through and including the Employee's date of termination. The event or events which result in a commission earned will depend on the product or service sold and is defined in the Commission Schedule that Employee is provided prior to marketing and/or selling the product or service.

division, group or franchise or a larger organization) which engages in acquiring customers through door to door home and/or door to door business solicitations, and/or solicitation in or outside retail stores, and/or solicitation through events based marketing in or outside retail stores within a thirty five (35) mile radius of the county in which Company's principal place of business is located during the time period this Agreement was in effect.

MUTUAL ARBITRATION OF ALL CLAIMS: Any claims that an Employee may have against the Company (except for workers' compensation or unemployment insurance benefits), and any claims the Company may have against Employee shall be resolved by an arbitrator and not in a court proceeding. This arbitration agreement is explained in detail in the **MUTUAL ARBITRATION OF ALL CLAIMS AGREEMENT**, which is provided herewith and incorporated herein by reference.

NO MODIFICATION OF AT-WILL EMPLOYMENT UNLESS IN WRITING: The at-will relationship between Company and Employee may only be changed or modified by an agreement in writing signed by the President of Company.

SEVERABILITY: Should any part of this Agreement be declared invalid, void, or unenforceable, all remaining parts shall remain in full force and effect and shall in no way be invalidated or affected.

BY ACCEPTING EMPLOYMENT WITH COMPANY, OR CONTINUING TO REMAIN EMPLOYED BY COMPANY, YOU ARE ACKNOWLEDGING THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE TERMS OF THIS AT-WILL EMPLOYMENT AGREEMENT.

Signed By	Signed Date
Myn Fabrice	5/21/18

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

SUFFOLK, ss. Civil Action No. 20-01871

ERICA DIPLACIDO; TYLER KEELEY: RYAN LABRIE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

SPRINT SOLUTIONS, INC; et al.

Defendants.

E-FILED 3/9/2022

SL

OPPOSITION TO SPRINT SOLUTIONS, INC.'S SECOND MOTION TO COMPEL INDIVIDUAL ARBITRATION OF PLAINTIFFS' CLASS CLAIMS[1]

Defendant Sprint Solutions, Inc. ("Sprint") is moving to compel Plaintiffs Erica DiPlacido, Tyler Keeley, and Ryan LaBrie to arbitrate their claims against the company on an individual basis. To prevail, Sprint must prove that Plaintiffs agreed to arbitrate with the company and that the arbitration clause in their Employment Agreements does not cover class claims. That is because arbitration is a matter of consent, not coercion, and no party can be forced to arbitrate a dispute absent evidence of an agreement to do so.

Sprint has failed to meet its burden. Indeed, at no point in its 15-page brief does Sprint argue (or even imply) that Plaintiffs agreed to arbitrate with the company. That is unsurprising – Sprint is neither a party to the arbitration clause it is trying to force on Plaintiffs nor is it an intended third-party beneficiary of it. In other words, it is an objective fact that Plaintiffs did not

[1] Plaintiffs Erica DiPlacido, Tyler Keeley, and Ryan LaBrie have reached an agreement in principle with Boss Enterprise, Inc. and Kuralay Bekbossynova to settle their claims against those two parties. That agreement does not settle or resolve Plaintiffs' claims against Sprint Solutions, Inc. Thus, the only remaining issue before this Court is whether Sprint Solutions, Inc. can enforce an arbitration provision in the employment agreement between Plaintiffs and Boss Enterprise, Inc. even though it is not a party to that agreement.

agree to arbitrate their claims against the company.

In an effort to get around the plain language of the arbitration clause, Sprint argues that equity entitles it to force Plaintiffs to arbitrate for one reason – Plaintiffs did not distinguish between Defendants in the complaint. Because that is Sprint's only argument in favor of arbitration, the Court can decide the dispute simply by reviewing the complaint. If the pleadings are as Sprint represents, then the Court must conduct additional inquiry – i.e. whether the arbitration clause permits class claims. However, if Plaintiffs did distinguish between Sprint and the other Defendants, then further inquiry is unnecessary, and Sprint's motion dies on the vine. A quick read of the complaint establishes that Plaintiffs' allegations are methodically parsed out against Sprint and the other Defendants. But even if they were not, Plaintiffs can arbitrate them against Sprint on a class basis because the arbitration clause plainly permits such claims. For all the foregoing reasons, as detailed further below, Sprint's motion should be denied.

BACKGROUND

Sprint is in the business of selling wireless services to consumers. *See* Complaint, ¶ 13.[2] Sprint sells those services directly to consumers through its website, and via door-to-door promotions. *See id.* at ¶¶ 15-16. Plaintiffs filed this case on or about July 12, 2019. *See DiPlacido, et al. v. Assurance Wireless of South Carolina, LLC, et al.*, C.A. No. 1982CV00888 docket no. 1. As detailed in the complaint, Sprint has engineered a scheme which enables the company to have door-to-door promotions employees in Massachusetts without being subject to the state's wage and hour laws. *See generally* Complaint (Exhibit 1). In sum, Sprint partners with local fly-by-night promotions companies, like Boss, that recruit individuals to promote Sprint wireless services to people at their homes. *See id.* at ¶¶ 17, 41. The local companies serve

[2] Attached as Exhibit 1.

as straw employers of the employees on a daily basis, but Sprint maintains ultimate control and direction over their activities from behind the scenes. *See id.* at ¶¶ 36, 41, The motive for this scheme is transparent: it creates the illusion that Sprint has no employment relationship with the promotions employees, and thereby sets Sprint up to disclaim any responsibility for them, or claims they may have arising from their work promoting Sprint's services. Plaintiffs allege that Sprint misclassified the door-to-door promotions employees as independent contractors and failed to pay them certain wages and/or provide certain benefits. *See generally id.*

On or about February 11, 2021, Defendants filed their first motion to compel arbitration. *See* docket 15. That motion was premised on two separate arbitration-related documents. *See generally id.* The first document was an "Employment Agreement" between Boss and Plaintiffs, and it contains the token arbitration clause Sprint is attempting to force on Plaintiffs in the present motion. *See* docket 15.2, Exhibit A. The second was an "Arbitration Policy" Defendants contended Plaintiffs entered with Boss and was incorporated in the "Employment Agreement." *See id.*, Exhibit B. Sprint was not a signatory to either document. *See id.* at Exhibit A, Exhibit B. However, the company argued it could still enforce the arbitration clause in the Employment Agreement because it was a third-party beneficiary and Plaintiffs were equitably estopped from pursuing their claims in Court. *See generally* docket 15. Plaintiffs opposed Defendants' motion on multiple grounds, challenged whether the "Arbitration Policy" was the document incorporated in the "Employment Agreement," and argued that Defendants had failed to present any evidence that rebutted Plaintiffs' contention that the "Arbitration Policy" was fake. *See* docket 15.3. Plaintiffs never disputed signing the "Employment Agreement." *See generally id.* They simply argued Sprint (and Ms. Bekbossynova) could not enforce the arbitration clause in it. *See generally id.*

On or about July 21, 2021, this Court heard arguments on Defendants' first motion but did not issue a ruling. Instead, the Court directed the parties to engage in a limited period of discovery concerning the authenticity of the documents in dispute and scheduled the matter for an evidentiary hearing. After discovery, the parties agreed that an evidentiary hearing was unnecessary because the dispute turned on a pure legal issue – i.e. whether Sprint could compel Plaintiffs to arbitrate their claims based solely on the arbitration clause in the "Employment Agreements" between Plaintiffs and Boss. On or about January 21, 2022, Defendants served their second motion to compel arbitration. *See generally* Motion. Sprint and Ms. Bekbossynova no longer argue that they are intended third-party beneficiaries of the arbitration agreement between Plaintiffs and Boss nor do they rely on the "Arbitration Policy" that Plaintiffs so heavily contested the authenticity of in their opposition to the first motion. *See id*.

STANDARD

Arbitration "is a way to resolve those disputes—but only those disputes—that the parties have agreed to submit to arbitration." *First Options of Chicago, Inc. v. Kaplan,* 514 U.S. 938, 944 (1995). "Applying this principle … courts should order arbitration of a dispute only where the court is satisfied that neither the formation of the parties' arbitration agreement *nor* (absent a valid provision specifically committing such disputes to an arbitrator) its enforceability or applicability to the dispute is in issue." *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 299 (2010). When analyzing whether the non-moving party is bound by an arbitration agreement, "courts should be extremely cautious about forcing arbitration in situations in which the identity of the parties who have agreed to arbitrate is unclear." *InterGen N.V. v. Grina*, 344 F.3d 134, 143 (1st Cir. 2003). That is because "arbitration is a matter of contract and a party

cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *McCarthy v. Azure*, 22 F.3d 351, 354 (1st Cir. 1994) (*quoting AT & T Technologies, Inc. v. Communications Workers,* 475 U.S. 643, 648 (1986)). Indeed, a preference for arbitration cannot trump the more basic requirement of consent: "Though a person may, by contract, waive his or her right to adjudication …, there can be no waiver in the absence of an agreement signifying an assent." *Id*. at 355.

For that reason, the federal policy favoring arbitration does not apply when determining whether a party agreed to arbitrate with another party, or whether a non-signatory may insert itself into a contract in order to enjoy its arbitration provision. *See, e.g., Griswold v. Coventry First LLC*, 762 F.3d 264, 271 (6th Cir. 2014) ("The presumption in favor of arbitration does not extend … to non-signatories to an agreement; it applies only when both parties have consented to and are bound by the arbitration clause."); *see also, e.g., California Fina Group, Inc. v. Herrin*, 379 F.3d 311, 316 fn. 6 (5th Cir. 2004) ("federal policy favoring arbitration does not apply in a situation like this when a court is determining whether an agreement to arbitrate exists. Rather it applies when a court is determining whether the dispute in question falls within the scope of the arbitration agreement already found to exist"). The "final answer" to a question of assent "is ordinarily a function of the parties' intent as expressed in the language of the contract documents." *Id*.

ARGUMENT

1. Sprint cannot invoke equitable estoppel to force Plaintiffs to arbitrate their claims against the company.

a. *Machado* does not apply because Plaintiffs' complaint does not "lump" together Defendants or allegations without distinction.

"[I]n certain exceptional situations, a nonsignatory to an agreement may invoke an arbitration clause." *Hogan v. SPAR Grp., Inc.*, 914 F.3d 34, 39 (1st Cir. 2019) (*citing Grand Wireless, Inc. v. Verizon Wireless, Inc.*, 748 F.3d 1, 9-10 (1st Cir. 2014)). There are generally six theories non-signatories can use for that purpose. *See, e.g., Machado v. System4 LLC*, 471 Mass. 204, 201 (2015). Of them, Sprint advances one: estoppel. That effort fails because there are no exceptional circumstances in this case that would justify allowing Sprint to use estoppel to force Plaintiffs to arbitrate their claims.

As detailed above, Sprint orchestrated a scheme that enabled the company to enjoy the fruits of Plaintiffs' services for years while purposefully avoiding any formal relationship with them. Now faced with Plaintiffs' claims, Sprint argues it would be inequitable if the company cannot invoke the terms of the Employment Agreement – a contract it could have easily joined as a party and is not bound by itself. Given that Sprint is solely responsible for concocting this arrangement, it is hardly inequitable for the company to live with its results. Indeed, "just 'as a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit,' [*United Steelworkers of Am.*, 363 U.S. at 582] so, it may not invoke an arbitration agreement it has refused to be bound by, when such an invocation suits its purposes." *Griggs v. Evans*, 43 A.3d 1081, 1088 (Md. Spec. App. 2012).

To conjure up a workaround for the hypocritical position it is taking, Sprint recasts the allegations in the complaint so it can rely on *Machado*. In that case, the Supreme Judicial Court ("SJC") held that a party to an arbitration agreement can be estopped from avoiding arbitration with a non-signatory if the allegations against the non-signatory are intertwined with the allegations against a signatory to the arbitration agreement. *Machado*, 471 Mass. at 215—216. In its analysis, the Court noted that "courts frequently look to the face of the complaint" when

assessing "whether a plaintiff has advanced sufficient allegations of concerted misconduct." *Id.* at 215. Based on that standard, the Court found that the plaintiffs were estopped from avoiding arbitration with the non-signatory defendants because, in part, they "lumped" the defendants together in the complaint without distinction, and there "[was] not a single claim against [either defendant] as a separate entity." *Machado*, 471 Mass. at 216.

Tracking *Machado*, Sprint argues that Plaintiffs are estopped from litigating their claims in this case because they "assert allegations of interdependent and concerted misconduct against [Sprint] on a joint employment theory." Motion, 9. That is the entirety of Sprint's estoppel argument, but it takes no more than a passing read of Plaintiffs' complaint for it to fall apart. Plaintiffs went great lengths to parse out the allegations and counts against Sprint and the other Defendants. For example, there are 40 factual allegations in the complaint (paragraphs 13 to 52). *See id.* at 3 – 7. Of those allegations, 28 address Sprint specifically (paragraphs 13 to 40) and eight address Boss and/or Ms. Bekbossynova specifically (paragraphs 44 to 52). Only ***two*** address the Defendants, collectively (paragraphs 41 and 43). *See id.* Moreover, there are 21 class allegations in the complaint (paragraphs 53 to 73). *See id.* at 7 – 11. The first 14 allegations concern Sprint (paragraphs 53 to 66) and the remaining seven relate to Boss and/or Ms. Bekbossynova (paragraphs 67 to 73). *See id.* And finally, the complaint sets forth nine counts. *See id.* at 11 – 14. Counts I to VI exclusively address Sprint and Counts VII to IX exclusively address Boss and Ms. Bekbossynova. *See id.* Based on the face of Plaintiffs' complaint, *Machado* is inapposite. Plaintiffs simply did not "assert allegations of interdependent and concerted misconduct" against all Defendants without distinction.

b. Resolution of Plaintiffs' claims against Boss will not resolve legal questions at issue in their claims against Sprint.

Sprint argues that Plaintiffs should be required to arbitrate their claims against the company because it makes "good sense." That argument fails. As a general matter, it has no legal basis. The SJC has not recognized "good sense" as a theory of estoppel or otherwise that a non-signatory can use to invoke an arbitration clause they are not a party to. More specifically, Sprint's liability is not intertwined with Boss's. That is illustrated by the fact that Sprint will not automatically be liable if judgment is entered against Boss. *See, e.g., Jinks v. Credico (USA) LLC*, No. 1784CV02731-BLS2, 2020 WL 1989278, at *10 (Mass. Super. Mar. 31, 2020) (allowing motion for summary judgment against promotions company but denying it against company that hired the promotions company to engage in a door-to-door sales campaign). Moreover, Boss is not even a necessary party to this case. *See e.g., Youssefi v. Direct Energy Bus., LLC*, No. SUCV201803809BLS1, 2020 WL 2193677, at *1 (Mass. Super. Feb. 28, 2020) (denying motion to dismiss by energy company that hired a non-party promotions company to engage in a door-to-door sales campaign on the grounds that the plaintiffs' claims were not dependent on wrongdoing by the non-party).

To prevail against Sprint on a joint employer theory, Plaintiffs must prove that the company "retained for itself sufficient control over the terms and conditions" of their employment. *Jinks,* 2020 WL 1989278, at *5. That requires examining the totality of the circumstances of the working relationship between Sprint and Plaintiffs, "guided by a useful framework of four factors: whether the alleged [Sprint] (1) had the power to hire and fire [Plaintiffs]; (2) supervised and controlled [their] work schedules or conditions of employment; (3) determined the rate and method of payment; and (4) maintained employment records." *Jinks v. Credico (USA) LLC*, Case No. SJC-13106, at *1 (2021) (citation omitted). Because those

factors relate exclusively to the relationship between Sprint and Plaintiffs and do not concern Boss, resolution of Plaintiffs' claims against Boss will not resolve questions at issue in their claims against Sprint or have any bearing on them.

2. The arbitration clause permits class claims.

a. *Stolt-Nielsen* does not preclude Plaintiffs from arbitrating their class claims.

Sprint's interpretation of *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 684 (2010) is neither novel nor effective. That case did not announce a rule that class arbitration can only proceed where the parties affirmatively and unequivocally state that they intend to arbitrate on a class basis. Since it was decided, the Supreme Court and several appellate courts have clarified that "*Stolt-Nielsen* did not establish a bright line rule that class arbitration is allowed only under an arbitration agreement that incants 'class arbitration' or otherwise expressly provides for aggregate procedures." *Sutter v. Oxford Health Plans LLC*, 675 F.3d 215, 222 (3d Cir. 2012), *aff'd*, 569 U.S. 564 (2013); *Southern Communications Services, Inc. v. Thomas*, 720 F.3d 1352, 1359 (11th Cir. 2013); *Fantastic Sams Franchise Corp. v. FSRO Ass'n Ltd.*, 683 F.3d 18, 22 (1st Cir. 2012); *Jock v. Sterling Jewelers Inc.*, 646 F.3d 113, 123 (2d Cir. 2011).[3] Rather, as those courts held, *Stolt-Nielsen* merely states that an arbitrator exceeds his authority when he imposes class arbitration as a policy matter, instead of determining if the parties intended to arbitrate class claims by interpreting their written agreement.

[3] Numerous federal district courts have reached the same conclusion, rejecting arguments that *Stolt-Nielsen* forbids arbitrators from adopting class procedures or adjudicating class claims except when an agreement explicitly authorizes such claims. *See, e.g., Rame, LLC v. Popovich*, 878 F. Supp. 2d 439 (S.D.N.Y. 2012); *Brookdale Sr. Living, Inc. v. Dempsey*, 2012 WL 1430402, *1 (M.D. Tenn. Apr. 25, 2012); *Laughlin v. VMWare, Inc.*, 2012 WL 6652487, *1 (N.D. Cal. Dec. 20, 2012); *Amerix Corp. v. Jones*, 2012 WL 141150, *1 (D. Md. Jan. 12, 2012); *Mork v. Loram Maintenance of Way, Inc.*, 844 F. Supp. 2d 950 (D. Minn. 2012); *Guida v. Home Savings of America, Inc.*, 793 F. Supp. 2d 611 (E.D.N.Y. 2011); *Valle v. Lowe's HIW, Inc.*, 2011 WL 3667441, *1 (N.D. Cal. Aug. 22, 2011); *Louisiana Health Service Indem. Co. v. Gambro A B*, 756 F. Supp. 2d 760 (W.D. La. Dec. 2010); *Mathias v. Rent-A-Center, Inc.*, 2010 WL 3715059, at *5 (E.D. Cal. Sept. 15, 2010).

By way of background, *Stolt-Nielsen* was an unusual case, and its holding was a narrow one with limited application outside its distinct set of facts. The matter started as a dispute between animal feed suppliers and various maritime shipping companies following a federal investigation into illegal price fixing by the shipping companies. *See id*. at 662. All of the parties involved were "sophisticated business entities" which had entered into a special form contract used in maritime trade which contained an arbitration clause. *Id.* at 684-686. After the federal investigation revealed that the shipping companies had engaged in illegal price-fixing, the animal feed suppliers filed a number of lawsuits. *Id.* These were consolidated into a single action and referred to arbitration. *Id.* One of the animal feed suppliers requested that the arbitration proceed on a class basis. *Id.* The shipping companies opposed that request. *Id.* An arbitration panel ruled that the arbitration could proceed on a class basis. *Id.* at 1765-66.

On appeal, the Supreme Court held that the panel had exceeded its authority because the parties had stipulated that they had never intended to arbitrate on a class basis. *Id.* at 1775-76 ("the parties cannot be compelled to submit their dispute to class arbitration" where they had "stipulated that there was 'no agreement' on this question"). Obviously, the arbitration panel could not infer an intent to arbitrate on a class basis where the parties affirmatively stated that no such intent had ever existed. As the Court subsequently clarified:

> The parties in *Stolt-Nielsen* had entered into an unusual stipulation that they had never reached an agreement on class arbitration. In that circumstance, we noted, the panel's decision was not – indeed, could not have been – "based on a determination regarding the parties' intent." Nor, we continued, did the panel attempt to ascertain whether federal or state law established a "default rule" to take effect absent an agreement. Instead, "the panel simply imposed its own conception of sound policy" when it ordered class proceedings. But "the task of an arbitrator," we stated, "is to interpret and enforce a contract, not to make public policy." In "impos[ing] its own policy choice," the panel "thus exceeded its powers."

Oxford Health, 569 U.S. at 571 (citations omitted).

The Supreme Court subsequently held its decision in *Stolt-Nielsen* was simply that arbitrators exceed their authority where they "impos[e] class procedures based on policy judgments rather than the arbitration agreement itself or some background principle of contract law that would affect its interpretation." *AT&T Mobility LLC*, 563 U.S. 333, 347 (2011). Stated another way:

> *Stolt-Nielsen* did not *displace* common law contract interpretation rules such as the well-settled principle of interpreting ambiguous contracts against the drafter. Instead, it *reinforces* common law contract interpretation rules by requiring arbitrators to identify these rules when analyzing the parties' intent to authorize class arbitration.

Southern Communications, 829 F. Supp. 2d at 1337 (emphasis original), *aff'd*, 720 F.3d 1352 (11th Cir. 2013), *cert. denied*, 134 S.Ct. 1001 (Jan. 21, 2014).

Those decisions present but a sample of recent cases arising after *Stolt-Nielsen* in which class arbitrations have proceeded in the face of arbitration agreements that do not expressly reference class arbitration. *See generally, e.g., Knudsen v. North Motors, Inc.*, AAA Case No. 11 155 02699 09 (May 18, 2010) (Daerr-Bannon, Arb.) (broadly worded silent arbitration agreement permitted class arbitrations) (attached as Exhibit 2); *Colquhuon v. Chemed Corp.*, AAA Case No.11 160 001581 10 (May 6, 2011) (silent arbitration agreement permitted class arbitrations; use of the term "any and all claims" compelled conclusion that parties intended to pursue class claims in arbitration) (attached as Exhibit 3); *SWLA Hospital Assocs. v. Corvel Corp.*, AAA 11 193 02760 06 (Sept. 3, 2010) (Daerr-Bannon, Arb.) (silent arbitration agreement permitted class arbitrations based on application of state contract law principles) (attached as Exhibit 4); *Demetriou v. Earthlink, Inc.*, AAA 11 117 00273 10 (Sept. 1, 2010) (Hare, Arb.) (finding that arbitration agreement, which had contained an express class action waiver which was struck by the district court prior to compelling arbitration, permitted class arbitrations based on New Jersey and California contractual principles) (attached as Exhibit 5); *Galakhova v.*

Hooters of America, Inc., Civ. A. No. 34-2010-73111, slip op. (Calif. Super., Jul. 27, 2010) (upholding arbitral decision permitting class arbitrations) (attached as Exhibit 6); *Popovich v. Rame LLC*, 2012 WL 2372692 (Feb. 6, 2012) (Weinstock, Arb.) (attached as Exhibit 7) (silent arbitration agreement permitted class arbitrations based on application of state contract law principles).

b. The canons of contract interpretation compel class arbitration.

Congress enacted the Federal Arbitration Act to place arbitration agreements "on equal footing with all other contracts," *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006), and to "ensur[e] that private arbitration agreements are enforced according to their terms," *Volt Information Services, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468, 478 (1989). "[B]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum." *See e.g.*, *Gilmer v. Interstate/Johnson Lane, Corp.*, 500 U.S. 20, 26 (1991) (*quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985)); *see also*, *e.g.*, *Warfield v. Beth Israel Deaconess Med. Center, Inc.*, 454 Mass. 390, 398 n.13 (2009) ("An employee who agrees to arbitrate [a statutory] claim of course does not forgo the substantive rights afforded by the statute.").

"[C]ontracts containing unambiguous language must be construed according to their plain and natural meaning." *Smart v. Gillette Co. Long-Term Disability Plan*, 70 F.3d 173, 178 (1st Cir. 1995). This maxim is particularly true when it is probable that the party that drafted the language of a contract is sophisticated. *See Mowbray v. Moseley, Hallgarten, Estabrook & Weeden, Inc.*, 795 F.2d 1111, 1117 (1st Cir. 1986). In keeping with that purpose, an arbitrator must adhere to the plain language of the parties' written agreement. *See Stolt-Nielsen*, 559 U.S.

at 671. If the agreement does not address class claims, the arbitrator's task is to "give effect to the intent of the parties." *Id*. at 684.

When interpreting the intent of a contract, the "objective is to construe the contract as a whole, in a reasonable and practical way, consistent with its language, background, and purpose." *Rubin v. Murray.*, 79 Mass.App.Ct. 64, 75-76 (2011); *see also*, *e.g.*, *Stolt–Nielsen,* 559 U.S. at 68 ("It falls to courts and arbitrators to give effect to [ ] contractual limitations [contained in arbitration agreements], and when doing so, courts and arbitrators must not lose sight of the purpose of the exercise: to give effect to the intent of the parties."). As a result, "[t]he written language of a contract governs the parties' rights unless it is not susceptible of "clear meaning" or is the result of fraud, duress or mistake." *Trustees of Boston College v. Big East Conference*, 1772004 WL 1926799, *5 (Mass. Super. Ct. Aug. 18, 2004) (*citing* Adler v. Abramson*,* 728 A.2d 86, 88 (D.C.1999); *see also, e.g., Tiffany v. Sturbridge Camping Club, Inc.*, 32 Mass.App.Ct. 173, 175 n. 5 (1992)). Words of a contract are to be given "their plain and ordinary meaning in the light of the circumstances and in view of the subject matter." *De Freitas v. Cote*, 342 Mass. 474, 477 (1961).

Moreover*,* the Court must consider "what a reasonable person in the position of the parties would have thought the disputed language meant." *Trustees of Boston College, supra* (*quoting Patterson v. District of Columbia,* 795 A.2d 681, 683 (D.C. 2002)). "The endeavor to ascertain what a reasonable person in the position of the parties would have thought the words of a contract meant applies whether the language is ambiguous or not." *Id*. (*quoting Fairfax Village Condominium VIII Unit Owners' Ass'n v. Fairfax Village Community Ass'n, Inc.,* 726 A.2d 675, 677 n. 4 (D.C. 1999)). A reasonable person assessing a contract is "presumed to know 'all the circumstances before and contemporaneous with the making of the [agreement]' and is 'bound

by all usages which either party knows or has reason to know.'" *Id*. (*quoting* Adler, 728 A.2d at 88-89). For example, in *Smith & Wollensky Restaurant Group, Inc. v. Passow,* 2011 WL 148302 (D. Mass. Jan. 18, 2011), the court upheld an arbitrator's partial award which interpreted an arbitration provision to permit class claims based, in part, on its finding that "wage and hour claims like those in play here are frequently pursued as class or collective actions, and both the Claimants and [Respondent] must be deemed to understand that." *Id.* at *1; *see also Dixon v. Perry & Slesnick,* 75 Mass.App.Ct. 271, 276 n.7 (2009) ("it appears that class actions, which are permitted under the Wage Act, can be maintained in the arbitration forum").

> The relevant part of Boss's arbitration clause with Plaintiffs states as follows:
>
> MUTUAL ARBITRATION OF ALL CLAIMS: Any claims that an Employee may have against the Company (except for workers' compensation or unemployment insurance benefits), and any claims the Company may have against Employee shall be resolved by arbitrator and not in a court proceeding.[4]

Docket 15.2, Exhibit A. That language must be construed according to its plain and natural meaning because it is plain and its intent clear – to ensure Plaintiffs' claims (against Boss) would be resolved in an arbitration forum and not in a court. *See Smart*, 70 F.3d at 178. No other interpretation of the laconic clause is reasonable. That is because the standard for interpreting the terms is how a "reasonable person" would have done so – not an attorney. No reasonable person would read the terms "MUTUAL ARBITRATION OF ALL CLAIMS" or "[a]ny claims" and believe that the arbitration clause excludes any claims other than the two specifically identified as such. [5] Any argument that those terms are unclear, ambiguous, or somehow

[4] The Employment Agreement expressly defines "Company" as Boss Enterprise Inc.

[5] The plain and ordinary meaning of "any" is "one or some indiscriminately of whatever kind," or "every." Merriam-Webster Online, *available at* http://www.merriam-webster.com/dictionary/any. "'All' means 'all,' or if that is not clear, all, when used before a plural noun . . . means '[t]he entire or unabated amount or quantity of, the whole extent, substance, or compass of, the whole.'" *Awuah v. Coverall North America, Inc.*, 703 F.3d 36, 43 (1st Cir. 2012) (*quoting Instrument Indus. Trust ex rel. Roach v. Danaher Corp.*, 2005 WL 3670416, at *6 (Mass. Super. Nov. 28, 2005)). Neither term admits to limitations.

evidence an intent to exclude class claims strains credulity.

Not only would a reasonable person have thought the agreement included class claims, but Boss – the source of the agreement – must be presumed to have known they were included, as well. Class actions under the Massachusetts wage and hour laws had been commonly filed for years prior to Plaintiffs' execution of the agreement and, thus, Boss could not have been unaware of that when they guaranteed Plaintiffs could bring "any" and "all" claims against the company in arbitration.[6] The Supreme Court has embraced that construct. If an arbitration agreement is silent as to class-wide arbitration, it is not permitted, unless local law authorizes it. *See Stolt-Nielsen*, 559 U.S. at 673-674. Here, local law indisputably authorizes class claims because they are a substantive right under the Massachusetts Wage Act. *See Machado*, 465 Mass. at 514.

In sum, when the unambiguous language of the arbitration clause is viewed as a whole, through the eyes of a reasonable person, and in the context of a jurisdiction where local law entitles employees to pursue class actions and such claims are commonplace, it is clear that the intent of the clause was to avoid a judicial forum by arbitrating *all* claims, including class claims. *See Rubin, supra; Stolt-Nielsen*, *supra*. Consequently, inquiry into the scope of the arbitration clause ends there. *See Siebe, Inc. v. Louis M. Gerson Co., Inc.*, 74 Mass.App.Ct. 544, 549 (2009) ("If the terms are found to be unambiguous . . . the task of judicial construction is at an end and the parties are bound by the plain and ordinary meaning of the terms of the contract").

[6] Notably, the American Arbitration Association reported in *Stolt-Nielsen* that it had administered *283* class arbitrations in the six-year period between 2003 and 2009. *See AAA Amicus Curiae Brief*, 2009 WL 2896309, at *22 (U.S. 2009). *See also*, *e.g.*, *David B. Lipsky & Ronald L. Seeber*, "The Appropriate Resolution of Corporate Disputes: A Report on the Growing Use of ADR by U.S. Corporations," Cornell/ PERC Inst. on Conflict Resol., Ithaca, N.Y., Jan. 1998, 11 (survey of Fortune 1000 companies revealed the use of arbitration was found in 62 percent of employment disputes); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 123 (2001) (noting that alternative dispute resolution procedures have been "adopted by many of the Nation's employers").

Conclusion

For the reasons set forth above, Plaintiffs respectfully request that this Court deny the motion. If this Court finds that Plaintiffs are estopped from avoiding arbitration with Sprint, Plaintiffs respectfully request that the parties be ordered to arbitrate their claims on a class basis.

Respectfully submitted,

ERICA DIPLACIDO;
TYLER KEELEY; RYAN LABRIE,
on behalf of themselves and all
others similarly situated,

By their attorney,

/s/ Brook S. Lane
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Dated: February 4, 2022

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2022, I served the foregoing document upon counsel for Defendants via electronic mail.

/s/ Brook S. Lane
Brook S. Lane

Volume: I
Pages: 1-32
Exhibits: None

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUFFOLK SUPERIOR COURT

* * * * * * * * * * * * * * * * *

ERICA DIPLACIDO, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, ET AL

VS.

ASSURANCE WIRELESS OF SOUTH CAROLINA, LLC, ET AL

DOCKET NO. 2084CV01871

* * * * * * * * * * * * * * * * *

BEFORE THE HONORABLE JUDGE BRIAN DAVIS

APPEARANCES:

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Courtroom 1309
March 9, 2022

Geraldine R. Parisi
Approved Court Transcriber

P-R-O-C-E-E-D-I-N-G-S

(Court called to order.)

(2:05 p.m.)

THE CLERK: Docket Number 2084CV1871, Erica DiPlacido on behalf of themselves and all other similarly situated, et al versus Assurance Wireless of South Carolina LLC, et al. This matter is before the Court for defendant's motion to compel arbitration.

Counsel, would you please state your name for the record beginning with plaintiff's Counsel?

MR. LANE: Thank you, Madam Clerk, good afternoon, Your Honor, Brook Lane for plaintiffs.

THE COURT: All right, Mr. Lane.

MR. MILLER: Good afternoon, Your Honor, Barry Miller for Assurance Wireless and Sprint.

THE COURT: Okay, Mr. Miller.

MS. GREENE: Corrine Greene for defendants Kuralay Bekbossynova and Boss Enterprise.

THE COURT: Okay, thanks Ms. Greene.

So I have a little difficulty compiling all the documents that I should have on this motion. Maybe that was in part because it wasn't filed as part of a 9A package. I don't know if there was some dispensation granted by another judge not to file it pursuant to 9A, but we got these, I guess, filed separately and I did not have

a response by the plaintiff on the docket, so I did not see that. We've now received it. Bear with me one second. Oh yeah, we've now received it. But let me just tell you what I have and you can tell me if I have everything or if I should have other things.

I have defendants' brief on scope and enforceability of arbitration provision; I have defendant Sprint's reply regarding scope and enforceability of arbitration provision; I've got an affidavit of Molly Mooney; and I have opposition to Sprint solutioning second motion to compel individual arbitration of plaintiff's class claims.

Are those all the documents that I should have?

MR. LANE: I believe so, Your Honor.

MR. MILLER: Your Honor, those are the operative papers. In reference to the issue you raised about how these things were filed, a motion to compel arbitration was briefed in this case in February of 2021, and so the briefs that you see are briefs that Judge Davis instructed us to file after the hearing on that motion. And so there's an argument that the earlier briefing is also germane, Judge Davis didn't resolve that motion, but I do think that the papers that you referenced are the core of this conversation.

THE COURT: Well, I have a question of that too before we get to the merits. I saw on the docket there was

something that indicated -- let me just see if I can find it. There's Boss' joint motion to compel arbitration, which was allowed. Maybe I'm confused about that. It does not look like there was a ruling on Docket 15, Boss' motion was Docket 16.

MR. LANE: I have noticed that on the docket, I think that is somehow just a mistaken entry. There was a motion to continue or a motion for an extension of deadlines or something like that that's filed around that time, and somehow there was an entry that the motion to compel arbitration was allowed. I think, Counsel for all parts would agree that the Court has not entered a ruling on any motion yet. And based of my review of the docket, having noted that before, I just believe somehow someway just a misentry of sorts.

MR. MILLER: Agreed, Your Honor, that's what happened.

THE COURT: Okay. All right. That's helpful clarification. So I guess, I have a fundamental question as to who the plaintiffs were working for, who was their employer.

Mr. Lane, what do you say about that?

MR. LANE: Well, Your Honor, that is the predominant dispute in this particular case. Since filing this, the SJC has weighed in on the standard for establishing joint employment. Attorney Miller actually represented the

defendants in that case and is well versed in the Court's ruling from the *Jinx vs. Credico*.

THE COURT: I'm sorry, tell me the name of the case?

MR. LANE: It is *Jinx vs. Credico*, C-r-e-d-i-c-o. In that case, the Court stated that the standard for determining joint employment, it guided in part by what are known as the Bay State Factors. And so the short answer to your question, plaintiffs alleged that they were jointly employed by both Boss Enterprise and, in this case, Direct Energy. To take a bit of a step back and sort of, I guess, give the Court an overview --

THE COURT: Well, I have in the complaint, I'm looking at Count IV. It says that Sprint misclassified plaintiffs as independent contractors when they were actually employees of Assurance.

MR. LANE: Right.

THE COURT: So as to the allegation against Sprint, it looks like you're alleging that the plaintiffs were employees of Assurance.

MR. LANE: Your Honor, I forget -- this case has sort of a tortured administrative history. It started in, I believe, Norfolk Superior. It was transferred and took some time to get over to the BLS. At some point, during the life of this case, I believe, Counsel for Sprint raised the fact that it's actually Sprint that is the, I guess,

the relevant party, not Assurance Wireless, which I believe that I may be misspeaking here, but it's more of a brand of Sprint as opposed to a stand alone entity and/or a subsidiary of Sprint. So I believe there may have been some early definition in the complaint that sort of referred to Sprint and Assurance Wireless as, you know, one in the same. For all purposes of this particular motion, it's sort of immaterial, but it's more of kind of an administrative issue that came up during the case where essentially Attorney Miller and Attorney Silveira informed me that Assurance Wireless wasn't really, I guess, the entity that was the relevant party in this matter.

THE COURT: Well your pleading directs me to read carefully the complaint, which I did. And it looks like -- and I don't know, was there ever an amended complaint filed?

MR. LANE: I don't believe so, Your Honor.

THE COURT: Okay. So we're looking at the original class action complaint, and it alleges that Sprint and Assurance operated together as Assurance Wireless, but then has separate claims against Assurance alleges that the plaintiffs were employees of Assurance. And that includes the allegation with respect to Sprint. So I'm not sure what I'd do in terms of disentangling this when I'm looking at the complaint, which hasn't been modified.

MR. LANE: Right Your Honor, so admittedly these are a bit messier than, I guess, would be preferred, but I think the upshot or the point is, whether it's Assurance or Sprint or T-Mobile or any other entity other than Boss. It's the plaintiffs' position that they have no ability to enforce this particular arbitration agreement. And so even though the complaint may be somewhat entangled as to Sprint and Assurance, the arguments apply solely to either or both of them, if they are separate, or the same parties.

THE COURT: All right. Let me hear from, I guess, Mr. Miller first, or Ms. Greene, whoever is going to be arguing the motion, and then I'll hear, again, from you, Mr. Lane.

MR. MILLER: Thank you, Your Honor. I believe it finally makes sense for me to take the lead on that. I think the best place for me to start is to answer the same question that you asked of Mr. Lane because the complaint is a little bit opaque. And if the question is who was plaintiffs' employer as a matter of empirical fact and common sense, plaintiffs' employer was Boss Enterprise. The relationship is as follows; Boss Enterprise hired, supervised, paid all of the plaintiffs at issue here. It's the only entity that did that. Boss Enterprise is a small sales organization, and the principle of that organization is the name defendant Kuralay Bekbossynova.

Ms. Bekbossynova and her company entered into an agreement with a company that is not a party to this proceeding. That company is called Credico USA, LLC, and it is the same entity that Mr. Lane referenced that we had before the SJC on the standard for joint employment. So Boss entered into a contract with Credico, whereby, Credico brokered certain sales services to be performed by Boss to Sprint. And Mr. Lane is correct that Assurance Wireless was essentially a program that spread maintain. Assurance Wireless is tied to the Federal Life Line program, which was a congressional mandate that made cell phones available for low income people, Sprint then contracted Credico and Credico contracted with many organizations like Boss to get those phones out into people's hands.

THE COURT: Do I have any of this, in the record before me, on the question of whether I should enforce the arbitration clause?

MR. MILLER: It's not in this record because there really is no record. We're at the pleading stage despite the fact that this is kind of old.

THE COURT: I know, but that's what I'm grappling with. When I read your papers, I was thinking I would get an explanation of the way in which this relationship was dependent on the Boss employee relationship, or the Boss plaintiff relationship as opposed to being separate. And I

can't -- I don't know that I can just take the parties' representations unless these facts are stipulated.

MR. MILLER: Well, I think where they are, Your Honor, is in a place where the Court can take judicial notice of them. Everything that I just said is in the Jinx opinion. The reason that you don't have it here is because the Jinx opinion had not come down. And so in moving to compel arbitration, we're largely limited to the complaint. We don't have -- and did not, at least as of a year plus ago, have a basis to put before the Court these facts about the relationship between the parties. But I think that an examination of the complaint and, in fact, Mr. Lane's statement thus far make it pretty clear that plaintiffs' position here is that Sprint Assurance Wireless were employers of the plaintiffs in a legal sense by operation of the joint employment standard that Mr. Lane references, which Credico decided. I think that is clearly plaintiffs' position. There's no allegation, for example, in the complaint of any separate or direct relationship with Sprint, and there wasn't one.

So from there this becomes relatively straightforward. And I don't think anything that I said is disputed as a factual matter, obviously, Mr. Lane will let us know if it is. But the point for the plaintiff which it makes sense to begin, the analysis of whether this dispute has to be

compelled arbitration is in the relationship between plaintiffs and Boss. There is no serious contention that plaintiffs are free to litigate in this Court against Boss Enterprise. Plaintiffs now admit after the discovery that we conducted since we were last before Judge Davis, that each of them signed an employment agreement, and each of them signed an agreement that contained a certain (indiscernible) (2:18:55) that they would arbitrate any claims that they might have against Boss. The only effort the plaintiffs have ever made to avoid that obligation to arbitrate, is referenced in plaintiffs' most recent briefing, in which they state that they've undertaken to settle their claims against Boss.

And what we know now, at least to the best of my information, is that is not (indiscernible) (2:19:19). There's nothing on the record that reflects stipulation of dismissal, a motion for approval of any settlement or anything like that. And so we have claims against Boss that are uncontroversially subject to an agreement to arbitrate.

Even if Mr. Lane tells us that he has reached a deal in principle, I don't think that that would change because the scenario that plaintiffs have tried to create by settling with Boss, is the very situation contemplated by the Silverwoods Partners case that's cited in our papers.

In Silverwoods Partners case, the plaintiffs sue two individuals and an entity. The two individuals were subject to arbitration agreements, the entity was not. When the defendants in common moved to compel arbitration, the plaintiffs amended its complaint and dropped its claims against the entity that was not subject to the agreement. I'm sorry, the other way around, dropped the claims against the individuals that were subject to the arbitration agreement, leaving only the entity that was not subject to that agreement as the defendant in the case. And what the Court did was look at the complaint, much as we've undertaken to do already today, and look at the stage of the proceedings at which plaintiffs initially framed their claims. Consistent with the principles of equity and the notion that plaintiffs not be able to avoid a situation in which they plead interrelated claims against a group of entities and then dropped some of them in order to bail out of an arbitration agreement. Point there is, even if plaintiffs perfected a settlement with Boss and that entity was no longer here, whether they are bound to arbitrate is measured by the complaint that they filed, and the complaint that they filed clearly provides those interrelated allegations.

MR. LANE: For what it's worth, and I don't mean to interrupt, I don't disagree with any of that except that

Sprint can compel us to arbitrate. We've never argued that any sort of settlement or negotiation with Boss would anyway affect Sprint's ability to compel arbitration here.

THE COURT: That's a helpful clarification. Can I also ask you, Mr. Lane, if you agree that you're required to arbitrate the claims against Boss?

MR. LANE: Yes.

THE COURT: All right. Go ahead, Mr. Miller.

MR. MILLER: That's the important point. So now that we've established that plaintiffs are required to arbitrate against Boss, the only remaining question, in terms of the enforcement of this arbitration agreement on behalf of Sprint or Ms. Bekbossynova, is whether the claims that plaintiffs have asserted against Boss are intertwined with the claims that plaintiffs have asserted against Sprint and Ms. Bekbossynova. And I think what Mr. Lane has told us so far establishes that they are. The claims against Sprint, in this case, are advanced on a joint employer theory. There's no contention that there was a separate relationship that these people have with Boss, with Sprint rather, that was different from the relationship with Boss. In fact, it was the very same work. They're contending that they worked long days, and that, as a result, the commissions that they received did not rise to minimum wage and were not paid consistent with overtime pay

requirements, all of which we dispute. But they assert those claims with respect to one unitary body of work that they claim to be owed money for. And under those circumstances, Machado (Phonetic) case leaves only one option, which is to compel the entire dispute to arbitration. And the underlying rationale of that is germane here, in terms of applying the Machado case to the facts at hand.

The reason for that rule, the reason that Courts equitably have stopped plaintiffs from doing what Mr. Lane's clients are trying to do here, is all about judicial economy, and more than that the prospect of (indiscernible) (2:23:19) results. And so we can certainly imagine a situation where the claims against Boss are compelled to arbitration, and then an arbitrator makes findings of fact on any number of things, including disputed facts about the number of hours that these people worked, the amount of commissions that they were paid, all of those sorts of things. And on the other hand, this case proceeds in Court against Sprint and Ms. Bekbossynova and you can have a jury reaching incompatible conclusions even on those facts, which would create a total (indiscernible) (2:23:55), you would have conflicting results. It's also massively inefficient to have two proceedings where one will do and that is the holding of Machado.

Now, the plaintiffs undertake to avoid that dynamic with this assertion that they have methodically parse out. Their allegations against Sprint on the one hand, and Bekbossynova on the other hand. And a cursory review of the complaint reflects that that's just not true, and the only reason that they're making any claims against Sprint is based on the legal notion that Sprint had legal responsibility for the work that they performed for Boss. And while they plead these things in two separate lists, it's entirely a cut and paste job. Paragraphs 26 through 32 of the complaint, make allegations about Assurance Wireless/Sprint that are not only similar to, but identical to allegations made against Boss in Paragraphs 46 to 52. For example, Paragraph 26 says, that Assurance Wireless did not pay plaintiffs and the other promotional representatives the wages owed to them. Paragraph 46 says, Boss did not pay plaintiffs and other other promotional representatives the wages owed to them. It's verbatim. And it goes on like that through all of the substantive allegations in the complaint.

And Machado talks about something else, too, it's not just the same allegations against two different entities, it's also about whether the plaintiffs have alleged a concerted course of conduct. And we get that from the complaint, too. For example, if you look at Paragraph 25,

plaintiffs make an allegation that each day the plaintiffs and other promotional representatives promoted wireless services for Assurance Wireless, at the beginning of each shift, they would report to the office of one of Assurance Wireless' partners for meetings, training and other administrative matters. And if we fast forward to Paragraphs 41 and 45, we find out that that allegation is, in fact, an allegation about the plaintiffs visiting Boss' office. So when they make an allegation about these folks visiting an office with one of Sprint's partners, as part of Sprint's course of conduct here, we find out in Paragraph 41 that Boss was one of the third-party entities that Assurance Wireless engaged to recruit and oversee individuals who would promote Assurance Wireless services. And in Paragraph 45, we see each day that plaintiffs and other promotional representatives engaged in marketing and sales for Boss at the beginning of each shift, they would report to Boss' office.

THE COURT: All right. I think I understand the thrust of your argument.

Ms. Greene, is there anything you want to add before I turn to Mr. Lane?

MS. GREENE: No, Your Honor.

THE COURT: All right. Mr. Lane, do you agree that Machado is the operative framework that this has to be

decided under?

MR. LANE: Yes, largely.

THE COURT: So if Boss hires and trains, Boss has a relationship with Sprint, the individual plaintiffs do not have a direct relationship with Sprint, how is this anything other than intertwined?

MR. LANE: Your Honor, actually I need to clarify that. I would say Machado, but also in light of a recent *Jinx vs. Credico* decision, that case is also directly on point.

THE COURT: All right. Mr. Miller said that Jinx hadn't been issued yet. It may not be official or the rescript hasn't come out but it's been decided and it's available on line; is that right, Mr. Lane?

MR. LANE: That's not what I meant, Your Honor. What I meant to say was it had not been issued when we filed the first motion to compel.

THE COURT: Oh okay, it's been decided. All right.

Mr. Lane, what else should I know?

MR. LANE: So Your Honor, I think the issue here is a difference in opinion as to what the applicable impact is of sort of the pleading and then the law as it applies. So as Attorney Miller pointed out, there are really two issues -- I'm sorry, Attorney Miller only addressed the first issue before the Court. That is whether or not Sprint,

which is the nonsignatory to this agreement, can enforce Boss' agreement against the plaintiffs. I think it's worth noting that we don't even get to the second issue, which is addressed in the papers as to whether or not if Sprint, in fact, can enforce this agreement, whether or not it goes to arbitration on the individual or class basis. So we don't get to that --

THE COURT: We'll get to those in a second, if we need to.

MR. LANE: So notably what's sort of lost over here is the significant to the fact that Sprint had presented absolutely nothing in the way of an agreement between the plaintiffs and the company to arbitrate anything with them, and that's significant because the overall arching theme here is that arbitration is a matter of consent not coercion. And so in an effort to sort of work around that, they argue that equity still allows them to enforce this agreement, and it's noteworthy sort of two things; 1) when Courts have enforced that, it's only in exceptional circumstances; and 2) the first circuit speaking to that issue has stated that Courts should be extremely cautious in situations like this where the parties that have agreed to arbitrate are unclear. So we look at their motion, and most of what Attorney Miller just argued was not raised until the reply. The only like real equity argument they

made in their motion was that, in this particular case, plaintiffs plead interrelated claims against both Boss and Sprint. And because of that, under the standard articulated in Machado, they have a right to compel the plaintiffs to arbitrate their claims. And so that's outlined in detail on Page 10 of the motion. They state in Machado, the SJC found that System 4 was entitled to compel arbitration of plaintiffs' claims under their arbitration agreement with the nonsignatory because the plaintiffs consistently alleged concerted misconduct by System 4 and the nonsignatory, recognizing and accepting whether a plaintiff had advanced sufficient allegations of concerning misconduct, Courts frequently look to the face of the complaint.

So based on that standard they then went into the complaint, cited a series of paragraphs to show that plaintiffs (indiscernible) (2:30:47) in this complaint, had asserted or alleged, I'm sorry, basically interrelated claims of misconduct that we lumped all of the claims and allegations together. So in the reply we responded to that and said, "Actually we didn't." When you look at the complaint, which we summarized in Page 7, we methodically and very carefully parsed out out all of the different facts that supported the different claims against these different parts. And when you actually take the time to

look at the complaint, the claims against Sprint and Assurance, or them together, compared to those claims against Boss and Ms. Bekbossynova, are materially different and they are parsed out --

THE COURT: I know they're separately. I know they're alleged separately, they're stand alone counts.

MR. LANE: Right.

THE COURT: But I'm not sure that that's determinative. The question seems to be whether it is concerted misconduct, whether the defendants are acting together. It sounds like you folks are agreeing that I can consider here that Boss hired the plaintiffs, Boss interacted with Sprint, but set the terms directly for the plaintiffs, Boss paid the plaintiffs, the plaintiffs reported to Boss, and Sprint's role as an "employer" is because it was able to direct the terms of work, if you will, and the way in which the work was performed by the people that Boss hired because it was entering into an arrangement with Boss, maybe through Credico.

MR. LANE: I agree with some of that, I do think that, in this case, Sprint had more of an involvement in hiring these people than just turning that over to Boss. But the point is this, again, they raised the Machado standard, and the SJC in Machado said you look at the complaint. And that's what every other Court that looks at this theory of

equitable estoppel says. We look at the complaint, the complaint is parsed out. In the reply after pointing that out, they then say, "Oh well, that's just a meaningless technicality," even though they're the ones that raised that standard that's what the SJC says in the standard. And even in the case that they cite in the reply supporting them to (indiscernible) (2:33:22), the Court articulates that same standard and they go further than that. The Court, in that case, allowed the motion to compel based on equitable estoppel, the counts that did lump all the defendants together in the allegation, but then they denied it as to the specific allegations and counts that were asserted against just the nonsignatory. And that's significant here for two reasons; 1) again, it affirms -- the face of the complaint really is dispositive as to whether or not the claims are in theory interrelated; but 2) that the Tissera court, like the Superior Court also rejected this notion that just because two claims arise with the same set of facts means that they must be arbitrated. And so this new argument that they brought up for the first time in the reply about, well, who cares whether or not the claims are plead separately, it all arises from the same course of work that has been rejected numerous times by numerous Courts, including Tissera and the Superior Court.

THE COURT: I just want to make sure I have the case that you're citing me to.

You're referring to Texeira; is that right?

MR. LANE: I believe it's Tissera.

THE COURT: I'm just looking in your papers for it, and I'm not finding it quickly, but it doesn't mean it's not there.

MR. LANE: Right, because the only argument that they made concerning equitable estoppel in their motion was that we've plead interrelated claims in the complaint. So under Machado's standard, they get to --

THE COURT: Well, just tell me the case then, just tell me the case.

MR. LANE: Right, I'm trying to find their -- they cited it for the first time in their reply. It is T-i-s-s-e-r-a.

THE COURT: Okay.

MR. LANE: Versus NRT New England.

THE COURT: Okay. And you say that's distinguishable?

MR. LANE: No, what I'm saying is it affirms exactly what we're arguing.

THE COURT: Oh, I see, okay.

MR. LANE: It's basically, they go through the analysis that Machado discussed, which you look to the face of the complaint. They allowed the nonsignatory's motion

to compel arbitration based on that rule estoppel on that case because some of the complaint lumped them together with the signatory. But then they went further and they denied it as to all of the allegations and claims that were just against the nonsignatory. The Court then went further and said, "Just because claims are based on the same set of facts, does not provide a basis to just compel people to arbitrate." And while all the Courts that have said that including the Supreme Court case because, again, arbitration is matter of consent, not coercion. And so whether -- and the Court also said this, whether it's inefficient or uneconomical or whatever, those interests, those factors cannot overcome a person's consent to whether or not they agree to arbitrate a claim. That's (indiscernible) (2:36:16) here.

THE COURT: All right. Thank you.

Tell me why you think that this clause, if arbitration is required, allows for class arbitration?

MR. LANE: There's one more point I think is significant, Your Honor. And again, when you look at the specific language of this particular arbitration clause, it says as follows, and this is it. "Any claims that an employee may have against the company" --

THE COURT: Say that again?

MR. LANE: It says, "Any claims that an employee may

have against the company."

THE COURT: Does it have the word an or does it just say that employee, capital E, Employee?

MR. LANE: Employee.

THE COURT: Not an employee, but Employee; okay?

MR. LANE: An employee. But my point is, this is going back to their argument that well, it doesn't matter if the claims in the complaint are interrelated or not, it all arises out of the same source of conduct. The problem here is this arbitration clause doesn't cover any claims that arise out of their --

THE COURT: Bear with me, again. I want to make sure I have the contract correct because I didn't see it in the record with respect to all the papers that were filed in connection with this most recent briefing. If I go back to Docket Number 15, back filed a year ago, maybe I'll find it.

MR. LANE: Yeah.

THE COURT: But I don't have it now, I don't have that stuff in front of me. I have a version of the employment agreement at Page 2, which says, "Mutual arbitration of all claims," which is cited, recorded in defendant's brief, and it says, "Any claims that Employee may have."

MR. LANE: That's different than the agreement that

was originally attached to the first motion.

THE COURT: All right. Mr. Miller, is that a misquote?

MR. MILLER: Yes, it looks like it is, Your Honor. I'm looking at the affidavit of Kuralay Bekbossynova that was attached or filed in conjunction with the first motion. "Any claims that an employee may have against the company" and continues from there.

THE COURT: All right. Mr. Lane, sorry about that. Thanks for the clarification.

MR. LANE: No problem. So the point is, this agreement is very narrow in scope and it states any claim that an employee may have against the company. It does not say any claims that the employee may have arising out of their employment with the company, any claims that the employee may have arising out of their relationship with the company. It specifically is limited to claims against Boss. And so this argument that -- forget the standard of Machado, the argument and the motion, who cares if the claims and the complaint are interrelated or not. All these claims arise out of the same course of conduct, which that argument, again, it's been rejected by the Superior Court and numerous other Courts.

When you actually look at the terms of this arbitration agreement, it circumscribe to claims against

Boss. And so even though the claims may have arisen out of the same course of sales and employment with Boss, they're against Sprint.

THE COURT: All right. I understand that argument, I'm going to have to read Machado and the cases that might construed Machado to see if that matters at all under the Machado framework. But if you can address the next issue about whether that clause authorizes class claims, that would be helpful.

MR. LANE: Sure. So again, going back to the motion, the only thing that they argued in the motion Stolt-Nielsen basically prevented any sort of (indiscernible) (2:40:12) for being arbitrated unless an arbitration agreement expressly states that class claims are expressly permitted. That is not what Stolt-Nielsen said. The Supreme Court and numerous Courts have come out decisions and said that since then. When we pointed that out and then pointed to language that would support that -- the company, Boss, meant what they said when they said any and all claims between the parties can be arbitrated, they meant that. And when you read that language based on the standard that applies, which is a reasonable person looking at that language, no one would read it and assume that there were any claims that were excluded from that except for the two that were specifically identified as such.

And so in the reply they then brought up Lamps Plus and they say, "Okay, that's all well and great," you cited some cases that stand for the proposition that a case doesn't need to, or an arbitration clause doesn't need to expressly say that class claims are permitted, but you haven't said anything post Lamps Plus. And for the record, the reason why we didn't cite any cases related to Lamps Plus is because they had argued that in the motion. But there are cases that case after Lamps Plus, which say exactly that.

THE COURT: All right. Let me just shortcut this for a second, Mr. Lane. I'll give you an opportunity to file a letter up to two pages citing any cases post Lamps Plus that you think are relevant and the Court should consider.

MR. LANE: Sure. I can give the Court a cite right now.

THE COURT: All right.

MR. LANE: It is Jock vs. Sterling Jewelers, Inc.

THE COURT: Is that J-a-q-u-e-s?

MR. LANE: No, it's actually J-o-c-k.

THE COURT: J-o-c-k.

MR. LANE: Yes.

THE COURT: Versus what?

MR. LANE: Sterling, S-t-e-r-l-i-n-g.

THE COURT: Do you have the cite?

MR. LANE: 942F.3D617.

THE COURT: Okay.

MR. LANE: That's a second circuit case from 2019, and they stated, Lamps Plus leaves undisturbed the proposition, affirmed in Stolt-Nielsen, that an arbitration agreement may be interpreted to include implicit consent to class procedures. And that came after the Lamps Plus decision. So there are other cases out there, I have another one, but I think the point is this, is Stolt-Nielsen didn't say there's no class arbitration unless an arbitration agreement expressly permits, states that it's permitted. And that continues to be true even after Lamps Plus.

THE COURT: All right.

MR. LANE: So here we look at the language through the eyes of a reasonable person, it's clear that this agreement meant what it said, which was (indiscernible) (2:43:15) claims are subject to arbitration.

THE COURT: Okay. Mr. Miller, briefly on the last point only.

MR. MILLER: On the last point only, I think that Mr. Lane's argument is disposed by a single first circuit case. You have a very strong and consistent line of authority coming from the Supreme Court that not only says that you cannot infer an agreement to arbitrate on a class basis in the absence of evidence of an agreement to do just

that. We also have Supreme Court case laws that says silence or ambiguity in an arbitration agreement is, as a matter of law, insufficient to draw such an inference. And then we have the first circuit extending that line of analysis in a case that was decided last July, cited in our papers called *American Institute for Foreign Study, Inc. vs. Fernandez-Jimenez*. And it rejects exactly the argument that Mr. Lane just made. In that case, the agreement at issue stated, "I agree that any dispute with or claim against the defendant will be exclusively resolved by binding arbitration." In other words, language that is indistinguishable from the language here and contains the exact phrase, a couple of words that Mr. Lane just focused on in presenting his argument. His position is that the phrase "Any claims" includes class arbitration. The first circuit rejected that outright. And it's been rejected by every Court to have reached it. I have some familiarity with the Jock case, I didn't read it in preparation for this hearing, but it was one that our firm handled. And I think it fits in another category of cases that Mr. Lane cites. Most of what he cites, in his brief, for his contention that any claim implies an agreement to arbitrate on a class basis are decisions from arbitrators, who are operating with the specific (indiscernible) (2:45:14) drawn from the agreement to arbitrate itself that places

that clause construction issue with the arbitrator. And Mr. Lane cites lots of arbitration decisions where arbitrators have reached that conclusion. But then judicial review of that is a completely separate question.

Judicial review of those arbitration decision, as with the Jock case, doesn't ask whether the arbitrator got it right. It only asks whether he was so incredibly wrong that the result cannot fit. And that's essentially the import of all of the cases Mr. Lane cites. It is very clear, as a matter of law, that language about any claims does not include an agreement arbitrator.

THE COURT: All right. I'll have to take a look at the cases.

Counsel, thank you very much for the argument.

MR. LANE: Thank you, Your Honor.

MR. MILLER: Thank you, Your Honor.

THE COURT: I'll take it under advisement. Where do things stand in the case. If the case has a life post this motion other than arbitration, where do things stand?

MR. LANE: Well, Your Honor, I think based on the position that we took in response to papers, the Court can enter an order directing plaintiffs to arbitrate their claims against Boss and Ms. Bekbossynova. The only issue that remains is whether or not Sprint can enforce this agreement, and if so, whether those three parties can

compel plaintiffs to arbitrate on an individual basis or a class basis. So the second issue applies to Boss and Ms. Bekbossynova, the first issue only applies to Sprint.

THE COURT: Okay. Thank you very much.

MR. LANE: Thank you, Your Honor.

THE COURT: I'll get a decision out some time soon.

MR. LANE: Thank you.

(Court adjourned at 2:47 p.m.)

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NOTIFY

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
Civil No. 20-1871-BLS1

ERICA DIPLACIDO, & others[1]
Plaintiffs

vs.

ASSURANCE WIRELESS OF SOUTH CAROLINA, LLC, & others[2]
Defendants

NOTICE SENT 08.01.22 (3)

MEMORANDUM AND ORDER ON DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiffs bring this action on behalf of themselves and all others similarly situated against Assurance Wireless of South Carolina, LLC and Sprint Corporation (together "Sprint"),[3] and against Boss Enterprise, Inc. ("Boss"), and its principal, Kuralay Bekbossynova ("Bekbossynova"). Against all defendants, plaintiffs allege violations of the Wage Act, G.L. c. 149, § 148, the Minimum Wage Law, G.L. c. 151, § 1-1B, the Overtime Statute, G.L. c. 151, § 1A, and the Independent Contractor Statute, G.L. c. 149, § 148B. Sprint moves to compel arbitration pursuant to an arbitration provision in plaintiffs' employment agreements with Boss. For the following reasons, Sprint's motion is denied.

---

1 Tyler Keeley and Ryan LaBrie. Plaintiffs bring the case on behalf of themselves and all others similarly situated.

2 Sprint Corporation, Boss Enterprise, Inc., and Kuralay Bekbossynova.

3 Although plaintiffs have named defendants Assurance Wireless of South Carolina, LLC and Sprint Corporation, the parties seem to agree that Sprint Solutions, Inc. is the proper defendant. Plaintiffs have not yet amended their complaint or sought to substitute parties. The parties' filings regarding the present motion treat Sprint Solutions, Inc. as the operative defendant. Accordingly, I include Sprint Solutions, Inc. in the defined term "Sprint" for purposes of the decision on the present motion. The proper defendant will have to be sorted out later.

BACKGROUND

Plaintiff alleges that Sprint, which is in the business of selling wireless services, obtained the services of door-to-door promotions representatives (including plaintiffs) by entering into a partnership with Boss, which recruited the representatives and oversaw them. They allege that Sprint controlled how the representatives performed their work and that the representatives were employees of Sprint, despite being labelled as independent contractors. The complaint alleges separate claims against Sprint, Boss, and Bekbossynova for violating the Wage Act, the Minimum Wage Law, the Overtime Statute, and the Independent Contractor Statute.

In February 2021, defendants all moved to compel plaintiffs to arbitrate their claims. The motion was premised on an arbitration provision in the At-Will Employment Agreements ("Employment Agreements") between plaintiffs and Boss. That provision states:

> **MUTUAL ARBITRATION OF ALL CLAIMS**: Any claims that an Employee may have against the Company (except for workers' compensation or unemployment insurance benefits), and any claims the Company may have against Employee shall be resolved by an arbitrator and not in a court proceeding. The arbitration agreement is explained in detail in the **MUTUAL ARBITRATION OF ALL CLAIMS AGREEMENT**, which is provided herewith and incorporated herein by reference.

Employment Agreements at 2 (bold in original). The Employment Agreements define Boss as the "Company." The arbitration provision does not reference Sprint expressly or by implication, nor does it extend to all claims arising out of the employee's work (i.e. in relevant part, it only extends to claims the employee has against Boss).

The defendants' motion to compel arbitration was also premised on a Mutual Agreement to Arbitrate Employment-Related Disputes (the "Arbitration Policy"), which defendants contended Keeley and LaBrie executed.

Plaintiffs opposed the motion on several grounds. They argued that Sprint and Bekbossynova had no basis to invoke the arbitration provision in the Employment Agreements. They also questioned the authenticity of the Arbitration Policy.

On July 21, 2021, the Court (Davis, J.) heard arguments on the motion, but declined to decide the issue on the merits. Instead, Judge Davis ordered the parties to conduct limited discovery to determine the authenticity of both the Employment Agreements and the Arbitration Policy. He scheduled the matter for an evidentiary hearing.

In discovery, plaintiffs agreed they signed the Employment Agreements, but denied executing the Arbitration Policy. Defendants decided not to pursue their motion to the extent it relied on the Arbitration Policy, and plaintiffs conceded they must arbitrate their claims against Boss. The parties also agreed that an evidentiary hearing was unnecessary because only a legal question remained: the enforceability and scope of the arbitration provision contained in the Employment Agreements as to Sprint and Bekbossynova. They asked the Court to cancel the evidentiary hearing and schedule argument on the motion. At some point thereafter, plaintiffs settled their claims against Boss and Bekbossynova. They did not resolve their claims against Sprint.

DISCUSSION

The only remaining issue before the court is whether Sprint can enforce the arbitration provision in the Employment Agreements, even though it is not a party to those agreements. There can be no fair argument that plaintiffs consented to arbitrate any disputes they had against Sprint.[4] Instead, Sprint argues that, although it did not sign the plaintiffs' Employment

[4] Generally, "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." McCarthy v. Azure, 22 F.3d 351, 354 (1st Cir. 1994), quoting AT&T Techs., Inc. v. Communications Workers of Am.,

Agreements with Boss, it may enforce the arbitration provision in those agreements under the doctrine of equitable estoppel. The doctrine of equitable estoppel in this context permits a nonsignatory to compel a signatory to arbitration in two circumstances: "(1) when a signatory must rely on the terms of the written agreement in asserting its claims against the nonsignatory or (2) when a signatory raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." Machado v. System4 LLC, 471 Mass. 204, 211 (2015) (internal quotes omitted). See also Silverwood Partners, LLC v. Wellness Partners, LLC, 91 Mass. App. Ct. 856, 859-860 (2017).

Sprint does not argue that the first provision applies,[5] but relies heavily on the second provision and the decision in Machado. In assessing whether the second provision applies,

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475 U.S. 643, 648 (1986). See also Hogan v. SPAR Grp., Inc., 914 F.3d 34, 38 (1st Cir. 2019), quoting Ouadani v. TF Final Mile LLC, 876 F.3d 31, 36 (1st Cir. 2017) ("arbitration is a matter of consent, not coercion."); Landry v. Transworld Sys. Inc., 485 Mass. 334, 338 (2020), quoting Howard v. Ferrellgas Partners, L.P., 748 F.3d 975, 977 (10th Cir. 2014) ("[B]efore the [Federal Arbitration] Act's heavy hand in favor of arbitration swings into play, the parties themselves must agree to have their disputes arbitrated."); Constantino v. Frechette, 73 Mass. App. Ct. 352, 354 (2008) ("Absent advance consent to such an agreement, a party cannot be compelled to arbitrate a dispute."). The arbitration provision here is narrow, only reflecting plaintiffs' consent to arbitrate claims between the employee and Boss. See Employment Agreements at 2 ("[a]ny claims that an Employee may have against the Company [i.e. Boss] . . . "). It does not require the employee to arbitrate claims against Sprint or to arbitrate all claims arising out of the employee's work. See Hogan, 914 F.3d at 41-42 (equitable estoppel inapplicable where arbitration provision only applied to disputes "between the Parties" to the agreement; "Parties" did not include defendant). Cf. Sourcing Unlimited, Inc. v. Asimco Int'l, Inc., 526 F.3d 38, 41 (1st Cir. 2008) (compelling arbitration of claims against nonsignatory defendant under equitable estoppel where arbitration provision covered "[a]ny action to enforce, *arising out of, or relating in any way to*, any of the provisions of this agreement") (emphasis added); Machado v. System4 LLC, 471 Mass. 204, 206 (2015) (compelling arbitration where "virtually all claims arising out of the franchise relationship [were] subject to arbitration" under broadly-worded arbitration provision).

[5] The first provision does not apply. Plaintiffs' claims against Sprint are all based on wage and hour statutes, not the Employment Agreements between Boss and plaintiffs. Plaintiffs make no claim to any benefit or right under those agreements from Sprint. Based, as they are, on the nature of the services plaintiffs provided to Sprint, plaintiffs' claims would exist even if the Employment Agreements were declared void. See, e.g., Hogan, 914 F.3d at 42 (finding equitable estoppel inapplicable under the first provision). Cf. Machado, 471 Mass.

"courts frequently look to the face of the complaint." Machado, 471 Mass. at 215. In Machado, plaintiffs were franchisees who brought several claims against both their direct franchisor (NECSS) and a "master franchisor" (System4), including a claim that they were misclassified by both entities as independent contractors. Machado, 471 Mass. at 204-205. Plaintiffs were subject to a broadly worded arbitration provision in its contract with NECSS.[6] The SJC found that System4 was entitled to compel arbitration under both provisions of the equitable estoppel doctrine. Id. at 211-216. With regard to the second provision, the court explained:

> The plaintiffs have lumped the two defendants together, asserting each claim in their complaint against System4 and NECCS collectively. . . . In addition, the plaintiffs have consistently charged both System4 and NECCS with equal wrongs, failing to distinguish them throughout the evolution of this case, thereby effectively asserting "interdependent and concerted misconduct" between them. . . . For example, the plaintiffs allege that both defendants, "together," subjected them to "numerous misrepresentations" and "misclassified" them as independent contractors. Additionally, the plaintiffs allege that "[t]he written contracts between *Defendants* and the plaintiffs . . . are unenforceable" and unconscionable. . . . There is not a single claim alleged against System4 or NECCS as a separate entity.

Machado, 471 Mass. at 215-216 (citations omitted; emphasis added in Machado).

Plaintiffs' complaint does not labor under these defects. Unlike the plaintiffs in the Machado case, plaintiffs here assert separate counts against Boss and Sprint and have

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at 211-215 (first provision applied where plaintiffs asserted multiple claims arising from terms of franchise agreements containing arbitration clause).

[6] The arbitration clause in Machado required arbitration of any claims between the franchisee and NECCS "and its subsidiaries, affiliates, shareholders, officers, directors, managers, representatives, and employees, arising out of or related to . . . the franchise agreement . . . ; NECCS's relationship with the franchisee; or . . . the operation of the franchised business." 471 Mass. at 206. The court concluded that "virtually all claims arising out of the franchise relationship are subject to arbitration." Id.

specifically described the relationship they had with each company and the obligations each company owed to them.

Sprint appears to advocate for a broad reading of "the substantially interdependent and concerted misconduct" language used in Machado. Several considerations caution against this interpretation. First, Machado itself applied the language narrowly. Second, a narrow application is warranted in light of the fact that "it remains a fundamental principle that arbitration is a matter of contract, not something to be foisted on the parties at all costs." Landry v. Transworld Sys. Inc., 485 Mass. 334, 338 (2020), quoting Howard v. Ferrellgas Partners, L.P., 748 F.3d 975, 977 (10th Cir. 2014) (internal quotes omitted). Third, the second provision of the equitable estoppel doctrine seems to have grown out a reading of federal law affirmatively designed to promote arbitration.[7] The Supreme Court has recently reiterated or

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[7] In adopting and applying equitable estoppel, the Supreme Judicial Court in Machado cites Grigson v. Creative Artists Agency, LLC, 210 F.3d 524 (5th Cir.), cert. denied, 531 U.S. 1013 (2000), see Machado, 471 Mass. at 211, without an extended explanation of why Massachusetts should adopt the equitable estoppel principles. See Id. at 210 ("There are no reported Massachusetts appellate decisions determining whether [equitable estoppel] may be applied to extend the reach of an agreement to compel a signatory into arbitration with a nonsignatory. Nevertheless, we are guided in our analysis by decisions of several circuit courts of the United States Court of Appeals that have applied equitable estoppel in this precise context."). As to the second provision of the equitable estoppel formulation, Grigson, in turn, relies on and expressly says it "agree[s] with the intertwined-claims test formulated by" the Eleventh Circuit, 210 F.3d at 527, and cites from MS Dealer Service Corp. v. Franklin, 177 F.3d 942 (11th Cir. 1999), which says that without the "substantially interdependent and concerted misconduct" clause of equitable estoppel concept, "the arbitration proceedings between the two signatories would be rendered meaningless and the federal policy in favor of arbitration effectively thwarted." 177 F.3d at 947 (emphasis added). Grigson even begins its discussion seemingly with a thumb on the scales, writing that "[a]rbitration is favored in the law." 201 F.3d at 526. An earlier Eleventh Circuit case, McBro Planning & Development Co. v. Triangle Elec. Constr. Co., Inc., 741 F.2d 342 (11th Cir. 1984), applies a Seventh Circuit case, Hughes Masonry Co. v. Greater Clark County School Bldg. Corp., 659 F.2d 836, 841 n.9 (7th Cir. 1981), and "note[s] as well the federal policy favoring arbitration." 741 F.2d at 344 n.9. For its part, Hughes Masonry was decided under the first clause of the equitable estoppel formulation. See 659 F.2d at 839-841.

clarified that the federal policy is not so much to promote arbitration affirmatively, but to put an arbitration clause on the same footing as any other contractual provision. See Morgan v. Sundance, Inc., ___ U.S. ___, 142 S. Ct. 1708, 1713 (2022) ("the [Federal Arbitration Act]'s 'policy favoring arbitration' does not authorize federal courts to invent special, arbitration-preferring procedural rules. . . . Our frequent use of that phrase connotes something different." It is "'merely an acknowledgement of the FAA's commitment to overrule the judiciary's longstanding refusal to enforce agreements to arbitrate and to place such agreements upon the same footing as other contracts.' . . . The policy is to make 'arbitration agreements as enforceable as other contracts, but not more so.' . . . Accordingly, a court must hold a party to its arbitration contract just as the court would to any other kind. But a court may not devise novel rules to favor arbitration over litigation.") (citations omitted). Given the independent claims plaintiffs have asserted against Sprint, I cannot compel arbitration (or limit plaintiffs to an arbitration forum) against Sprint on equitable estoppel grounds.[8]

ORDER

So much of Boss Enterprises, Inc.'s, Kuralay Bekbossynova's, and Sprint Solutions, Inc.'s Joint Motion to Compel Arbitration (Docket #15) as relates to the claims against Sprint is **DENIED**. The remainder of the motion is moot by agreement of the parties.

/s/ Peter B. Krupp

Dated: July 29, 2022

Peter B. Krupp
Justice of the Superior Court

[8] Because Sprint's equitable estoppel argument fails, I need not address its additional contention that plaintiffs must be compelled to arbitrate their claims on an individual rather than class-wide basis.

Date Filed 8/19/2022 1:49 PM
Superior Court - Suffolk
Docket Number 2084CV01871

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. **SUPERIOR COURT DEPARTMENT**
BUSINESS LITIGATION SESSION

ERICA DIPLACIDO; TYLER KEELEY; and RYAN LABRIE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

SPRINT SOLUTIONS, INC.; BOSS ENTERPRISE, INC.; and KURALAY BEKBOSSYNOVA, individually

Defendants.

Case No. 2084-cv-01871-BLS1

DEFENDANTS' NOTICE OF APPEAL

Pursuant to Rule 3 of the Massachusetts Rules of Appellate Procedure and G.L. c. 251, § 18(a)(1), Defendant Sprint Solutions, Inc.[1] ("Sprint"), Boss Enterprise, Inc. and Kuralay Bekbossynova (collectively, "Defendants") hereby file this Notice of Appeal of this Court's denial of Defendants' Motion to Compel Arbitration (Dkt. 15). The Superior Court entered its Memorandum and Order and Defendants' Motion to Compel Arbitration on August 4, 2022. Defendants further request that this matter be stayed in the Superior Court pending resolution of their interlocutory appeal pursuant to G.L. c. 251 § 18(a)(1), and served a motion to that effect on Plaintiffs on August 19, 2022, pursuant to Superior Court Rule 9A.

[1] Sprint has made clear to Plaintiffs since the inception of this case that they had improperly identified Assurance Wireless of South Carolina, LLC and Sprint Corporation as the entities responsible for the Assurance Wireless program that is the subject of the Complaint. The proper defendant is Sprint Solutions, Inc. Assurance Wireless is a brand that Sprint acquired in 2009. *See Martin v. Sprint United Mgmt. Co.*, 273 F. Supp. 3d 404, 410 (S.D.N.Y 2017). As this Court recognized, despite being aware of this defect since at least 2019, Plaintiffs have not yet amended their complaint to add the proper parties. Sprint reserves all rights, to the extent Plaintiffs are not amenable to amending the Complaint to name the proper entities as parties to this case.

Date Filed 8/19/2022 1:49 PM
Superior Court - Suffolk
Docket Number 2084CV01871

Respectfully submitted,

BOSS ENTERPRISE, INC. and
KURALAY BEKBOSSYNOVA,

By their Attorney,

/s/ Corinne Greene (AHS w/ permission)

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SPRINT SOLUTIONS, INC.,

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Dated: August 19, 2022

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2022, a true copy of the foregoing motion was electronically filed through the Commonwealth's electronic filings system, and served on each of the parties' counsel of record, by electronic mail.

Alison H. Silveira

APPEALS COURT
Full Court Panel Case
Case Docket

ERICA DIPLACIDO & others vs. ASSURANCE WIRELESS OF SOUTH CAROLINA LLC & others
2022-P-0950

CASE HEADER

Case Status	Decided: Summary Disposition Rule 1:28	**Status Date**	04/21/2023
Nature	Employment Law/Discrimination	**Entry Date**	09/29/2022
Appellant	Defendant	**Case Type**	Civil
Brief Status		**Brief Due**	
Arg/Submitted	03/06/2023	**Decision Date**	04/21/2023
Panel	Blake, Englander, Walsh, JJ.	**Citation**	102 Mass. App. Ct. 1117
Lower Court	Suffolk Superior Court	**TC Number**	2084CV01871
Lower Ct Judge	Peter B. Krupp, J.	**TC Entry Date**	08/20/2020
SJ Number		**FAR Number**	
SJC Number			

INVOLVED PARTY	ATTORNEY APPEARANCE
Erica DiPlacido Plaintiff/Appellee Red brief filed	Hillary Schwab, Esquire Brook S. Lane, Esquire
Tyler Keeley Plaintiff/Appellee Red brief filed	Hillary Schwab, Esquire Brook S. Lane, Esquire
Ryan LaBrie Plaintiff/Appellee Red brief filed	Hillary Schwab, Esquire Brook S. Lane, Esquire
Assurance Wireless of South Carolina LLC Defendant	
Kuralay Bekbossynova Defendant	Corinne Hood Greene, Esquire
Boss Enterprise Inc Defendant	Corinne Hood Greene, Esquire
Sprint Corporation Defendant/Appellant Blue br, app & reply br filed	Barry J. Miller, Esquire Alison Hickey Silveira, Esquire Molly Clayton Mooney, Esquire Christina Duszlak, Esquire

DOCUMENTS

Appellant Brief
Appellee Brief
Reply Brief

ORAL ARGUMENTS

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DOCKET ENTRIES

Entry Date	Paper	Entry Text
09/29/2022	#1	Lower Court Assembly of the Record Package
09/29/2022		Notice of entry sent.
09/29/2022	#2	Civil Appeal Entry Form filed for Sprint Corporation. by Attorney Alison Silveira.
10/13/2022	#3	Docketing Statement filed for Sprint Corporation by Attorney Alison Silveira.
10/13/2022	#4	Docketing Statement filed for Kuralay Bekbossynova and Boss Enterprise Inc by Attorney Corinne Hood Greene.
10/31/2022	#5	Corporate disclosure statement filed for Sprint Corporation by Attorney Molly Clayton Mooney.

10/31/2022	#6	Corporate disclosure statement filed for Boss Enterprise Inc by Attorney Corinne Hood Greene.
11/08/2022	#7	Appellant brief filed for Sprint Corporation and Assurance Wireless of South Carolina LLC by Attorney Barry James Miller.
11/08/2022	#8	Appendix filed for Sprint Corporation and Assurance Wireless of South Carolina LLC by Attorney Barry James Miller.
12/08/2022	#9	Appellee brief filed for Erica DiPlacido, Tyler Keeley and Ryan LaBrie by Attorney Brook Lane.
12/22/2022	#10	Reply brief filed for Sprint Corporation and Assurance Wireless of South Carolina LLC by Attorney Barry James Miller.
01/11/2023		Notice sent seeking information on unavailability for oral argument in March 2023
01/30/2023	#11	Notice of 03/02/2023, 9:30 AM argument at Allan M. Hale sent.
01/30/2023		Response from Barry J. Miller, Esquire re: will appear and argue on 03/02/2023.
01/31/2023	#12	REVISED Notice (Location, Panel and Date Change) of 03/06/2023, 9:30 AM argument at New England Law Boston sent.
01/31/2023		Response from Brook S. Lane, Esquire re: will appear and argue on 03/02/2023.
02/02/2023		Response from Barry J. Miller, Esquire re: will appear and argue on 03/06/2023.
03/06/2023		Oral argument held. (Blake, J., Englander, J, Walsh, J.).
04/21/2023	#13	Decision: Rule 23.0. So much of the order as denied the motion to compel arbitration as to the defendants Assurance Wireless of South Carolina, LLC, and Sprint Corporation is affirmed. So much of the order as denied the motion to compel arbitration as to the defendants Boss Enterprises, Inc., and Kuralay Bekbossynova is reversed. The matter is remanded to the Superior Court for further proceedings consistent with the memorandum and order of the Appeals Court. (Blake, Englander, Walsh, JJ.). *Notice.

As of 04/26/2023 12:15pm